

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1127

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 77-1127

UNITED STATES OF AMERICA,

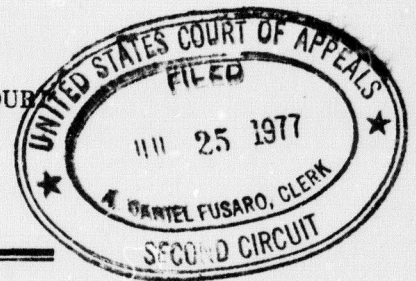
Appellee,

—v.—

LEOLUCA GUARINO,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



APPENDIX FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*

PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DIVISION
UNITED STATES DISTRICT COURT

JUDGE FRANKEL

73 CRIM. 480

A 1

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.: 264-6170
vs.		Lawrence S. Feld, AUSA
1) JOHN CARMA, a/k/a "Boots"	all counts	
2) LEOLUCA GUARINO, a/k/a "Spike"	all counts	
3) STEPHEN DELLACAVA, a/k/a "Lenny"	all counts	
4) JOHN CARUSO	ct. 1	
5) ROBERT JERMAIN, a/k/a "Frank"	cts. 1,2,3,4,5	
6) GEORGE HARRIS, a/k/a "Cincinnati"	ct. 1	
7) EARL SINS	ct. 1	For Defendant:
8) ALAN MORRIS, a/k/a "Midworld"	ct. 1	
9) JOSEPH MESSIA	ct. 1	
10) JACK BROWN	ct. 1	
11) CARMELO GARCIA, a/k/a "Chino"	ct. 1 & 6	

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	4/16/74	FELDER	✓	✓
J.S. 3 mailed 1, 2, 3, 5, 8, 6, 7	Marshal	4/16/74	MCALPIN	✓	✓
(4451) Violation 9, 11, (4451)	Docket fee	4/16/74	SCHMIDT	✓	10 -
Title					
Sec.					
see below					
---SIX COUNTS---					

DATE	PROCEEDINGS
	26:7237(b) and 21:816 - Conspiracy to violate narcotic laws (ct.1)
	26:1705(a) and 7237(b) - sale of heroin, I, not in pursuance of written order (cts. 2 & 3)
	21:812, 811(a)(1) and 811(b)(1)(A) - dist. and poss. with intent to dist. heroin, I (cts. 4, 5, 6)
5-16-73	Filed Indictment and ordered sealed for 30 days. E/W ordered. -- Ryan, J. E/W issued.
5-21-73	Indictment unsealed this date in open Court -- Frankel, J. case assigned to Judge Frankel as a related matter (73 CR 331)
5-21-73	JERMAIN- Filed affirmation of Leonard J. Levenson and notice of motion for an order releasing defendant on a P.R.F. - ret. 5-21-73 at 4:15 P.M.
5-22-73	JERMAIN- Filed affirmation of Leonard J. Levenson in re request to release deft. on a P.R.F. pending trial.
	-- over --

Barry Slotnick, Esq.
15 Park Row
New York, N.Y.

George Santangelo, Esq.
253 Broadway
New York, N.Y.

Michael Y. S. Telephone 134.
251 Broadway
New York, N.Y.

Lawrence K. FEITEL
1450 BWAY.
N-Y-C.

Robert Jermain
6 Montrose Drive
Dix Hills, L.I., N.Y.
(in custody)

George Harris
201-65 Oakley Street
Detroit, Mich.
(in custody)

Marion Gaines Hill, Esq.
209 W. 125th Street
New York, N.Y.

Earl Simms

Alan Morris
Lucasville, Penitentiary
Lucasville, Ohio

Joseph Messina
825 Penford
Bronx, New York

Edward Panzer, Esq.
299 Broadway
New York, N.Y.

Jack Brown

To: Mr. J. Edgar Hoover
1200 17th Street
New York

John Curley, Esq.
Local Aid Society
15 Park Row
New York, N.Y.

DATE	PROCEEDINGS
5-21-73	Alan Morris- Court directs entry of not guilty plea. Deft. remanded. Capra, Guarino, Dellacava, Jermain, Harris, Tessina & Garcia - All defendants enter plea of not guilty. Bails set on 73 CR 331 carried to this indictment. 10 days for motions.
5-22-73	Jermain- (Atty. present) Application for reduction of bail granted. Bail previously set at \$75,000. on indictment 73 CR 331 is vacated. Bail conditions on this indictment are as set forth in Attorneys (Leonard J. Levinson) affirmation dtd. May 22, 1973 and filed on 5-22-73, which are: Deed of the home of Jean Ferricks and \$2,000. cash to be posted by Lucille Eire with the Clerk of the Court. In addition a \$15,000. P.R.E. is to be posted which is to be co-signed by deft. and Christine Ignelzi, Carol Ann Dimperio and Paula E. Dimperio. Deft. is to report daily to the U.S. Atty. Bail limits to include Eastern District of New York. Deft. remanded. -- Frankel, J.
5-23-73	GEORGE HARRISON- Filed notice of motion for reduction of bail- Ret. 5-24-73.
5-25-73	Jarmain- Filed appearance bond #22833; in the sum \$15,000.00 dtd. 5/24/73
5-25-73	Morris- Filed copy of deft's financial affidavit.
5-21-73	MORRIS- Deft. produced on writ from Wayne County Jail, Detroit, Mich. Joseph I. Stone appointed counsel by court under C.J.A. No bail set. - writ adj. to June 2, 1973 -- Frankel, J.
5-21-73	HARRIS- (Atty. present) Application for reduction of bail granted. Bail is set at \$75,000. P.R.E. secured by \$8,000. cash and deed to home of Miss Williams. Miss Williams to co-sign bond. The same bail conditions apply to 73 CR 392 Deft. remanded in lieu of bail. -- Frankel, J.
5-25-73	SHES- Stuart Holtzman, Esq. appointed as counsel under C.J.A. Deft. enters plea of not guilty. Bail as set in Eastern District of Mich., \$3,000. P.R.E. sec. by \$300. continued on this indictment. -- Frankel, J.
5-25-73	Morris- File appointment of CJA atty Joseph I. Stone 277 Broadway.
5-31-73	Carmelo Garcia- Filed the following motions this date: Filed motion to disclose electronic surveillance. Filed motion to disclose inducement, promises and payments to prospective Government witnesses. Filed motion for severance pursuant to Rule 14.F.R.C.P. Filed motion to inspect Grand Jury minutes. Filed motion for discovery and inspection. Filed motion for bill of particulars. Filed motion to produce evidence favorable to the defendant. Filed motion for identification hearing.
6-4-73	Guarino- Filed affirmation and notice of motion to suppress.
6-6-73	A. MORRIS - Filed affirmation & notice of motion for a bill of particulars, discovery & inspection for a severance etc..
7-7-73	Robert Jermain- Filed affirmation and notice of motion for an order modifying defendant's bail conditions as originally set on 5-24-73

DATE	PROCEEDINGS
6-15-73	Jermain-Filed memo endorsed on defts application for modifications of defts bail conditions., Application denied. Frankel, J.
6-15-73	ROBERT JERMAIN-Filed memo endorsed on motion filed 1-6-73 Application denied. So Ordered--Frankel, J.
6-21-73	John Capra- Filed defendants memorandum of law.
6-20-73	Dellacava-Filed deft's memorandum of law.
7-20-73	ALL DEFTS.-Filed Memorandum to Counsel-Court is unable to reach motions & trial until mid-September.--Frankel, J. Mailed notices 7-23-73.
7-26-73	Filed Gov't Bill of Particulars.
7-30-73	Filed afdvt. of Gerald A. Feffer, AUSA DTD. 6-19-73
7-30-73	Filed afdvt. of Lawrence S. Feld, AUSA dtd. 6-19-73
7-30-73	CARMELO GARCIA -Filed memo endorsed on motion to inspect G.J. minutes..MOTION DENIED Frankel, J.
7-30-73	CARMELO GARCIA -Filed memo endorsed on motion to disclose electronic surveillane Motion Granted on consent. So ordered. Frankel, J.
7-30-73	C. GARCIA -Filed memo endorsed on motion for severance...Motion denied..Frankel, J.
7-30-73	Filed afdvt. of Lawrence S. Feld, AUSA dtd. 6-20-73
7-30-73	Filed Gov't's memorandum of law
7-30-73	Filed CAPRA'S REPLY memorandum
7-30-73	Filed Memorandum..The motion for particulars by DELLACAVA and GUARINO****the Court concludes that the items to which the Govt consents supply sufficient particulars ****The foregoing embodies the court's order****No settlement is necessary.... Frankel, J.... Mailed notice...
7-30-73	J. CAPRA - Filed memorandum****The motion to dismiss superseding indictment is denied. Motion for discovery of grand jury minutes is denied. The motion to suppress *** denied without prejudice..The demand for discovery and a bill particulars is granted to the extent of the govts consent. Etc....Frankel, J. Mailed notice.
7-30-73	A. MORRIS-Filed memorandum**The Govt has consented in considerable measure to the relief sought by the motion of deft dated 6-1-73 Except in the respect hereinafter granted, the remaining items of the motion are denied...Frankel, J. M/N
7-30-73	Filed afdvt. of L.S. Feld, AUSA dtd. 6-19-73..
7-30-73	CARMELO GARCIA - Filed memo endorsed on motion filed 5-31-73..This motion contains more uncritical boiler plate than able counsel ought to permit***the govt has made discriminating judgments and consented to the proper items of discovery. Except to the extent of that consent, this motion is denied....So ordered...Frankel, J.
8-20-73	ALL DEFTS - Filed Gov't's notice of readiness for trial.
8-16-73	<i>Filed Transcript of record of proceedings, dated July 30, 1973</i>
8-29-73	LEOLUCA GUARINO - Received letter from Russell & McAlevy dtd 8-10-73 stating that they appear as counsel.

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4.

Frankel, J.

DATE	PROCEEDINGS
Aug. 29-73	S. DELLACAVA - Filed notice of motion & afdvt. to suppress evidence
Sept 4-73	S. DELLACAVA - Filed stipulation that Lawrence K. Feitell, Esq of 1450 B'Way NYC is substituted as trial counsel in place of Michael L. Santangelo
Sept 5-73	S. DELLACAVA - Filed afdvt. of G.A. Feffer, AUSA dtd 9-5-73 in opposition to motion to suppress.
Sept 5-73	J. CAPRA - Filed defts Affidavit & Notice of Motion for an order dismissing the indictment or for a hearing in order to suppress all evidence seized herein or for a severance, and for such other further relief as to this Court may seem just and proper
Sept 5-73	J. Capra - Filed defts memorandum of law.
Sept 5-73	Filed letter of Barry Ivan Slotnick dated 9-5-73.
Sept 5-73	Filed memorandum for minimization hearing****A hearing is set to commence on the morning of Sept 17, 1973 (Notice mailed)
9-6-73	S. DELLACAVA - Filed notice of motion & afdvt. to suppress evidence..
9-10-73	L. GUARINO - Filed notice of motion for an order admitting Dennis D. S. McAlevy, Esq. pro hoc vice as atty. for Leoluca Guarino
9-10-73	S.D. CAVA) L. GUARINO) Filed notice of motion & afdvt. to suppress evidence J. CAPRA)
9-10-73	S.D. CAVA) L. GUARINO) Filed notice of motion & afdvt. 1. declaring the 1st Count of the indictment duplicitous 2. Striking the alias Spike 3. Suppressing information gained as a result of the illegal arrest etc. J. CAPRA)
9-11-73	J. MESSINA - Filed afdvt. & notice of motion to suppress evidence with memo endorsed. TM This motion is denied.....Frankel, J.m/n
9-11-73	J. MESSINA - Filed Govt's memorandum in opposition to motion to suppress.
9-13-73	C. GARCIA - Filed afdvt. of L.S. Feld, AUSA for an a Writ of Habeas Corpus
9-14-73	ALL DEFTS - Filed supplemental bill of particulars.
9-17-73	GEORGE HARRIS - Filed Second Offender Information
9-17-73	LEOLUCA GUARINO - Filed Second Offender Information
9-17-73	ALAN MORRIS - Filed Second Offender Information
9-17-73	STEPHEN DELLACAVA - Filed Second offender Information
9-17-73	STEPHEN DELLACAVA - Second Offender Information under indictment C123-464
9-17-73	STEPHEN DELLACAVA - Filed Information - C123-465
9-18-73	J. CAPRA - Filed memo endorsed on motion filed 9-10-73... Motion granted. So ordered Frankel, J.

Cont'd. on page 5

DATE	PROCEEDINGS
9-20-73	ROBERT JERMAIN - Filed notice of motion for an order severing the defts. pursuant to Rule 14.
9-20-73	ROBERT JERMAIN - Filed defts. memo of law.
9-20-73	ALAN MORRIS - Filed notice of motion to suppress.
9-20-73	STEVEN DELLACAVA) JOHN CAPRA) Filed afdvt's of both deft's dtd. 9-20-73.
9-21-73	ALAN MORRIS - Filed Order To Show Cause re: criminal contempt on 10-1-73. Frankel, J.
9-24-73	STEPHEN DELLACAVA, et al. - Filed deft. Dellacava's memo of law regarding Suppression of the April 13-73 Search Product.
9-20-73	ROBERT JERMAIN motion for severance, and memo-endorsed - Upon further consideration as a result of this motion, I have concluded that the statement giving rise to the motion will be excluded. Hence, while it has served an obviously useful purpose, the motion is no longer necessary. It is accordingly, denied. So Ordered, Frankel, J. (m/n)
Sep-24-73	Earl Sims - Filed defendants financial afdvt.
Sep-26-73	GEORGE HARRIS - Filed CJA copy #5 appointment of David Blackstone, Esq., 335 E 14th, NYC as counsel for defendant - Frankel, J.
10-9-73	STEVEN DELLACAVA - Filed afdvt & notice of motion for an order suppressing certain statements of the deft.
9-17-73	Minimization hearing commenced
9-18-73	Cont'd, Deft Garcias's bail exonerated, Bail in the amount of \$5,000 cash or surety bond set by the court... Remanded.
9-19-73	Hearing cont'd.
9-20-73	Hearing cont'd.
9-21-73	Hearing cont'd.
9-23-73	Hearing cont'd.
9-24-73	Hearing cont'd.
9-25-73	Hearing cont'd.
9-25-73	Hearing cont'd. and adj'd to Oct. 2, 1973
10-2-73	Hearing cont'd & concluded - Decision reserved.
10-2-73	Filed memo endorsed on order to show cause dtd 9-24-73 The matter is adj'd to 10:30 a.m. 10-11-73 and trial will be held at that time. So ordered Griesa, J.
10-16-73	Filed memorandum for counsel****A memorandum relating to the automobile search will be filed in the next day or so***Frankel, J.
10-18-73	R. JERMAIN - Filed afdvt. of G.A. Feffer, AUSA dtd. 10-18-73 for a writ of H/C
10-23-73	Filed supplemental bill of particulars.

DATE	PROCEEDINGS
10-23-73	EARL SIMMS - Filed CJA appointment of Stuart Holtzman Esq. 233 B'Way NYC 10007
10-29-73	J. CAPRA - Filed CJA authorization of SO. Dist. Court Reporters
10-29-73	R. JERMAINE - Filed CJA authorization of So. Dist. Court Reporters
10-31-73	Filed Govt's exhibit 3525A Ordered sealed and to be placed with the clerk in his vault in cashiers office....Frankel, J.

10-18-73	J. CAPRA) L. GUARINO) S. DELLACAVA) - JURY TRIAL BEGUN Defts SIMMS, MESSINA and GARCIA severed from R. JERMAINE) trial, upon Govt's motion. Count 6 is dismissed as to all depts's. G. HARRIS) A. MORRIS)
10-19-73	Trial cont'd.
10-23-73	Trial cont'd.
10-24-73	Trial cont'd.
10-25-73	Trial cont'd.
10-26-73	Trial cont'd.
10-29-73	Trial cont'd.
10-30-73	Trial cont'd.
10-31-73	Trial cont'd.
11-1-73	Filed one envelope Govt. Exhibit 3532A ordered sealed and placed in vault...Frankel, J.
11-9-73	Filed Court exhibit 1 ordered sealed and placed in vault....Frankel, J.
11-9-73	Filed order that U.S. Marshal deliver Herbert Sparling before Judge Frankel on Nov. 13-73....Frankel, J. Mailed notice
11-12-73	Filed affdvt. of D. McAlevy in support of writ of habeas corpus.
11-14-73	Filed affirmation of L.J. Levenson in support of a writ.
11-15-73	Filed order that U.S. Marshal deliver Thomas Lentini before Judge Frankel on 11-15-73.
11-15-73	GEORGE HARRIS - Filed affdvt. of L.S. Feld, AUSA in support of a Writ of H/C
11-1-73	TRIAL Cont'd.
11-2-73	Trial Cont'd.
11-5-73	Trial Cont'd.
11-7-73	Trial Cont'd.
11-8-73	Trial Cont'd.
11-9-73	Trial Cont'd.
11-13-73	Trial cont'd. Govt. Rest.
11-14-73	Trial cont'd.
11-15-73	Trial cont'd.
11-15-73	Trial cont'd.
11-19-73	Trial cont'd. Jury starts deliberation
11-20-73	Trial cont'd. Jury resumes deliberation
11-21-73	Trial cont'd. Jury returns verdict as follows----CAPRA, GUARINO, DELLACAVA and JERMAINE found GUILTY on all counts 1, 2, 3 & 4 & 5 cont'd. on present bail condition until 10 a.m. Nov. 23, 1973 at which time they are to surrender to U.S. Marshal in the Court...DEFTS HARRIS & MORRIS found guilty on Count 1. P.S.I. ordered on all depts Sent. date is Jan. 3, 1974....Frankel, J.

SEE 107

73 Cr. 460

7. FRANKEL, J.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
11-27-73	DELLA CAVA - Filed opinion #40047 The motion to suppress is denied...So Ordered. Frankel, J.... Mailed notice.	
11-23-73	JOHN CAPRA) STEVEN DELLA CAVA) LEOLUCA GUARINO) ROBERT JERMATH) Deft's surrendered to custody of U.S. Marshal pending sentence.	
12-4-73	Filed opinion # 40082 ***examining the conduct of the legal and police officials following Dec. 19, 72 the court concludes that it was reasonable and outlary is not warranted, ***the motion to suppress evidence from the Diane's Bar interceptions was denied.....Frankel, J.	
12-5-73	Filed opinion #40093 Supplementing the court's memorandum of Nov. 27-73**Having in mind the familiar rule that an agency's transgression of its own regulations may constitute a deprivation of due process***FRANKEL, J. /copy of	
12-18-73	Filed letter dated 12-17-73 to Judge Marvin E. Frankel from Paul J. Curran, U.S. Atty. with memorandums attached.	
12-26-73	Filed Mailed original (4 copy 1 to the A.O. Wash. D.C. for payment of Reporters Frankel, J.	
12-27-73	Filed memorandum opinion #40150 *****as the motion in this case was originally presented upon affidvts, the claim of a possessory interest by the movants J. Capra, L. Guarino and S. Della Cava was in general and conclusory terms***** This was not an intrusion initiated by law enforcement officers with the specific intent of discovering evidence of a crime. In short the court would sustain this as an essentially private search and a lawful seizure under authorities not always perfectly harmonious but sufficient in their net effect to validate what was done here.....Frankel, J.....Mailed notice to atty's.	
1-3-74	L. GUARINO - Filed affdvt. of deft. in response to the information filed by the Govt. pursuant to 21 U.S.C. Sec. 851	
1-3-74	JOHN CAPRA - Filed Judgment (# 74 0838) Atty. Barry I. Slotnick, present. The deft is committed for a period of FIFTEEN(15) YEARS on each of counts 1, 2, 3, and 5 to run concurrently with each other. THREE(3) YEARS on count 4 to run consecutively with sentence imposed on counts 1, 2, 3 and 5. On counts 1, 4, and 5, pursuant to the provisions of Section 841 of Ti. 21, U.S. Code, deft is placed on Special Parole for a period of SIX(6) YEARS in addition to said term of imprisonment....Deft is fined \$25,000 on count 1 and \$20,000 on count 2. Total fine \$45,000....The Court recommends that the deft be confined at Federal Detention Center, West St., N.Y., pending appeal if overtaxed facilities make that possible.....FRANKEL, J.....Docketed 1-7-74 NO BAIL SET. REMANDED.	
(SEE PAGE 8)		

DATE	PROCEEDINGS	Date Order or Judgment Noted
1-3-74	LEOLUCA GUARINO-Filed Judgment(#74,037)/Atty.Dennis D.S.McAlevy present. The deft is committed for imprisonment for a period of FIFTEEN(15)YEARS on each of counts 1,2,3,and 5 to run concurrently with each other. THREE (3)YEARS on count 4 to run consecutively with sentence imposed on counts 1,2,3 and 5. On counts 1,4 and 5, pursuant to the provisions of Section 841 of Ti.21, U.S.Code, deft is placed on SPECIAL PAROLE for a period of SIX(6)YEARS in addition to said term of imprisonment. Deft is fined \$25,000 on count 1 and \$20,000 on count 2. Total fine \$45,000.. The Court recommends that the deft be confined at Federal Detention Center, West.,N.Y. pending appeal if overtaxed facilities make that possible. NO BAIL. REMANDED. FRANKEL,J.....Docketed 1-7-74....	
1-3-74	STEPHEN DELLACAVA- Filed Judgment. Atty. Lawrence Feitell, present. The deft is committed for imprisonment for a period of FIFTEEN (15) YEARS on each of counts 1,2,3, 4, and 5 to run concurrently with each other. On counts 1,4 and 5, pursuant to the provisions of Section 841 of Ti. 21 U.S.CODE deft. is placed on Special PAROLE for a period of SIX (6) YEARS IN ADDITION TO said term of imprisonment. Court recommends that the deft be confined at Federal Detention Center, West Street, New York, N.Y. pending appeal if overtaxed facilities make that possible. FRANKEL, J..... DOCKETED 1-7-74 No bail. Remanded.	
1-3-74	ROBERT JERMAIN-Filed Judgment(Atty.Leonard J.Levenson,present)The deft is committed for imprisonment for a period of TWELVE(12)YEARS on each of counts 1,2,3,4 and 5 to run concurrently with each other. On counts 1, 4 and 5,pursuant to the provisions of Section 841 of Ti.21, U.S.Code, deft is placed on Special Parole for a period of SIX(6)YEARS in addition to said term of imprisonment...The Court recommends that the deft. be confined at Federal Detention Center, West St.N.Y., pending appeal if overtaxed facilities make that possible.....FRANKEL, J.....docketed 1-7-74 Deft is remanded.....	
1-3-74	ALAN MORRIS- FILED JUDGMENT. ATTY. JOSEPH I. STONE, PRESENT.The deft is committed for imprisonment, for a period of EIGHT (8) YEARS. Sentence to run conc with the sentence imposed in the U.S.D.C. EAST DIST OF MICHIGAN on 8-15-73, Docket #15688 The Court recommends that the deft be confined at Federal Detention Center, West Street New York, N.Y. pending appeal if overtaxed facilities make that possible, Frankel, J. Docketed: 1-7-74 Deft is Remanded....	
1-8-74	Filed memorandum #140185 on pretrial publicity...The events leading to the trial in this case included actions by law enforcement officers resulting in massive and lurid publicity for their activities***Defts have moved to dismiss the indictment or have convictions set aside***This court subject to wiser opinions from above deems such relief excessive and unjustifiable.*****Frankel, J...	
1-9-74	ALAN MORRIS - Filed notice of appeal..Mailed copy to Alan Morris Fed.Detention Headquarters 427 West St. NYC & U.S.Atty. S.D.N.Y. Joseph I.Stone,Esq. 277 B'Way NYC.....Appeal allowed in forma pauperis...Frankel,J. Entered on Docket 1-9-74..	
1-9-74	ROBERT JERMAIN - Filed notice of appeal..Mailed copy to Leonard J.Levenson,Esq. 11 Park Pl.NYC & U.S.Atty.S.D.N.Y.....Leave to appeal in forma pauperis granted on 1-8-74..Frankel,J. Entered on docket 1-9-74	

- CONT'D ON PAGE 9-

DATE	PROCEEDINGS
1-10-74	STEPHEN DELLACAVA - Filed notice of appeal from judgment of 1-3-74. Copies to U.S.ATTY. & Stephen Dellacava 427 West. St. NYC Ent.on docket 1-10-74..
1-11-74	LEOLUCA GUARINO - Filed notice of appeal from judgment of 1-3-74. Copies to U.S.Att'y. & Deft at Fed.Detention Headquarters West.St. N.Y. Ent.on docket 1-11-74..
1-11-74	JOHN CAPRA - Filed notice of appeal from judgment of 1-3-74. Copies to U.S.Att'y. & Deft J.Capra 15 Northwood Circle New Rochelle, N.Y. Ent. on docket 1-11-74....
1-11-74	Filed Gov't memorandum of law in opposition to motions of CAPRA, GUARINO and DELLACAVA.
1-14-74	Filed deft's memorandum on motion to suppress the Toledo Search Product
1-14-74	Filed Gov't memorandum of law in opposition to motion to suppress.
1-14-74	GEORGE HARRIS - Filed notice of appeal from final judgment..Mailed copies to U.S.Att'y. G.Harris Fed.House of Detention NYC D.Blackstone 335 B'Way NYC.....Memo endorsed Leave to file notice of appeal in forma pauperis is granted.....Frankel,J. Ent.on docket 1-14-74....
1-11-74	GEORGE HARRIS - Filed Judgment(David Blackstone, atty.present)the deft is committed for imprisonment for a period of THIRTEEN YEARS. Sentence to run concurrently with sentence imposed under indictment 73Cr.392....Pursuant to the provisions of Section 841 of Ti.21, U.S.C., deft is placed on Special Parole for a period of FIVE YEARS in addition to said term of imprisonment....Remanded. Frankel, J.....docketed 1-15-74.....
1-15-74	Filed memorandum...In the judgments in this case, the court apprised of the proposed appeals and urged to make consultation with counsel as convenient as possible****The Court will not go beyond the suggestion****Frankel,J. m/n
1-16-74	S.D. CAPRA Filed remand dated 11-23-73
1-16-74	R. JERMAIN Filed remand dated 11-23-73
1-16-74	J. CAPRA Filed remand dated 11-23-73
1-16-74	L. GUARINO Filed remand dated 11-23-73
1-16-74	L. GUARINO Filed commitment & entered return, Deft delivered to F.D.H. ON 1-3-74
1-16-74	J. CAPRA Filed commitment & entered return, Deft delivered to F.D.H. ON 1-3-74
1-16-74	R. JERMAIN Filed commitment & entered return, Deft delivered to F.D.H. ON 1-3-74
1-16-74	S. DELLACAVA Filed commitment & entered return, Deft delivered to F.D.H. ON 1-3-74
1-24-74	Filed transcript of record of proceedings, dated Oct. 16, 19, 23, 24, 25, 1973
1-24-74	Filed transcript of record of proceedings, dated Oct. 26, 29, 30, 31, 1973
1-24-74	Filed transcript of record of proceedings, dated Nov. 8, 9, 13, 1973
1-24-74	Filed transcript of record of proceedings, dated Nov. 14, 15, 16, 1973
1-24-74	Filed transcript of record of proceedings, dated Nov. 19, 20, 21, 1973
1-24-74	Filed transcript of record of proceedings, dated Nov. 1, 2, 5, 7, 1973
1-24-74	Filed transcript of record of proceedings, dated 1-3-74

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DATE	PROCEEDINGS
1-30-74	Filed letter to Judge Frankel dated Dec. 12, 73 from the US Atty. Feld.
1-30-74	Filed Letter to Judge Frankel dated Dec. 17, 1973 From US Atty Paul Curran.
1-30-74	Filed letter to Judge Frankel dated Dec 22, 73, from L.K. Feitell, Esq.
1-30-74	Filed Letter to Judge Frankel dated Dec. 24, 1973 from B.I. Slotnick, Esq.
1-31-74	Filed notice to docket clerk that the record on appeal has been certified and transmitted to the U.S.C.A..
1-22-74	George Harris - Ind commitment & entered return, Deft's name: F.D.H. on 1-11-74.
1-22-74	Filed commitment on commitment & entered return, Deft delivered to Fed Detention Hdqrs. on 1-3-74
2-27-74	Filed transcript of proceedings, dated: SEPT. 17-18/73.
2-27-74	Filed transcript of proceedings, dated: SEPT 18 - 21/73
2-27-74	Filed transcript of proceedings, dated: SEPT. 23-26/73; OCT 2/73.
2-27-74	Filed notice that the supplemental record on appeal has been certified and transmitted to U.S.C.A.
3-1-74	GEORGE HARRIS - Mailed original CJA copy 1 to the A.O. Wash. D.C. for payment.
3-6-74	A. MORRIS - Filed affdvt. of J.I. Stone, Esq. dtd. 2-5-74 to Frankel, J.
3-11-74	SACK BROWN - Closed statutorily because (X) guilty is () co-defendant a () witness fugitive. In all other respects this case is still pending.
3-13-74	ALAN MORRIS - Mailed original CJA copy 1 to A.O. Wash. D.C. for payment... Frankel, J.
3-12-74	EARL SIMMS) JOSEPH MESSINA) CARMELO GARCIA) ENTERED AND FILED NOLLE PROSEQUI..... Frankel, J.
3-15-74	L. Guarino - Filed memorandum of law.
3-15-74	Filed affdvt. exhibit, appendix and memorandum with regard to the minimization hearing.
3-15-74	Filed Analysis of telephone conversations contained in deft's exhibit S.
3-15-74	Filed Govt's supplemental memorandum in opposition to motions to suppress.
3-15-74	Filed Govt's memo in opposition to motions of CAPRA, GUARINO and DELLACAVA.
3-15-74	Filed affdvt. of G.A. Feffer, AUSA dtd. 9-15-73
3-15-74	Filed memorandum of law (Preliminary statement)
3-15-74	Filed deft Dellacava's memorandum of law.
3-15-74	Filed deft's requests on voir dire.
3-15-74	Filed deft Robert Jermain request to charge
3-15-74	Filed deft Robert Jermain memorandum of law.

(Cont'd. on page 11)

DATE	PROCEEDINGS
3-15-74	Filed Govt's memorandum of law in opposition to Dellacava's motion to suppress
3-15-74	Filed Govt's proposal for a pre-trial hearing on minimization.
3-15-74	L.GUARINO - Filed reply to Govt's proposal for pre-trial hearing on minimization
4-8-74	Designation of exhibits to be transmitted to the U.S.C.A. filed.
4-10-74	EARL SIMS - Mailed original CJA copy 1 to the A.O. for payment...Frankel, J.
4-8-74	*** Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.
5-9-74	J.CAPRA) L.GUARINO) S.D.CAVA) Filed affdvt. & notice of motion for a new trial.
5-30-74	3 Filed reply affdvt. to Govt's answering affdvt. in opposition to new trial.
6-3-74	Filed memorandum deft's Capra, Guarino & Della Cava seek a new trial.***The Court will hold the motion papers now on file. If and when the convictions are finally sustained and the mandate comes down, the movants may renew on the existing papers by filing a written statement.***Frankel, J.....Mailed notice.
6-20-74	ALAN MORRIS - Filed motion for correction of sentence.
7-24-74	ALAN MORRIS - Filed memorandum in support of said motion.
8-26-74	ALAN MORRIS - Filed supplemental brief for correction of sentence.
8-29-74	ALAN MORRIS - Filed memorandum. Mr. Morris argues with some ingenuity that his sojourn in Atlanta stamped him indelibly as a federal prisoner****the motion must be and it is denied....Frankel, J....
8-30-74	A.MORRIS - Filed affdvt of Gerald A. Feffer, AUSA dtd 7-2-74
9-30-74	A.MORRIS - Filed memorandum...the petitioner has applied for a certificate of probable cause****and it is denied....Frankel, J....Mailed notice
10-4-74	A.MORRIS - The court's memorandum of Sept. 30-74 is not squarely responsive to the question under rule 24 ****the court concludes that the appeal should not be permitted to proceed in forma pauperis.....Frankel, J....
10-9-74	Filed true copy of U.S.C.A. order with mandate attached. The judgments are affirmed in part and reversed in part in accordance with the opinion of this court. (Notice cards mailed to all atty's)
11-6-74	Earl Sims. et-al. Filed Transcript of Record of Proceedings dated 5-25-73
12-2-74	ALAN MORRIS - Filed motion for production of wiretap orders
12-16-74	ALAN MORRIS - Filed affdvt. of Lawrence S. Feld, AUSA DTD. 12-16-74
12-16-74	A.MORRIS - Filed memo endorsed on motion filed 12-2-74...The within motion appears to lack any sound basis in law or in fact. It is denied....Frankel, J.

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.12.

Frankel, J.

DATE	PROCEEDINGS
1-30-75	JOHN CARUSO - Closed statistically because (X) defendant) is () co-defendant) a () witness) fugitive. In all other respects this case is still pending.
4-11-75	Filed true copy of Supreme Court order that petition for writ of certiorari is denied.
7-8-75	JOHN CAPRA.. filed deft's affdvt. and Order to Show Cause for reduction of sentence... personal service on or before 7-8-75 by 11:00 a.m.... Ret. 7-11-75... FRANKEL, J.
7-10-75	LEOLUCA GUARINO: Filed defts Affirmation and Order To Show Cause, why an order should not be made, Modifying the sentence of the deft by reducing the sentence of deft as imposed etc, as indicated rtble before Frankel, J. on 7-10-75. Frankel, J.
7-10-75	STEVEN DELLACAVA. Filed defts Affirmation and Order To Show Cause why an order should not be made, modifying the sentence of the deft by reducing the sentence of deft as imposed, etc, as indicated, rtble before Frankel, J. on 7-10-75. Frankel, J.
7-11-75	JOHN CAPRA.. filed Amended Judgment.. the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FOURTEEN (14) YEARS on each of counts 2, 3 and 5 to run concurrently with each other... THREE (3) YEARS on count 4 to run concurrently with sentence imposed on counts 2, 3 and 5... On counts 4 and 5, pursuant to the provisions of Section 841 of Title 21, U.S. Code, deft. is placed on Special Parole for a period of SIX (6) YEARS in addition to said term on imprisonment.. Deft. is fined \$ 20,000 on count 2.. The court orders commitment to the custody of the Atty. General and recommends, that the Bureau of Prisons consider favorably if possible the application for deft's transfer to Lewisburg where family visits, with their rehabilitative potential, would be more feasible.... Frankel, J. Ent. on 7-29-75.
7-11-75	LEOLUCA GUARINO.. filed Amended Judgment... the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FOURTEEN (14) YEARS on each of counts 2, 3, and 5 to run concurrently with each other... THREE (3) YEARS on Count 4 to run concurrently with sentence imposed on counts 2, 3 and 5. On counts 4 and 5, pursuant to the provisions of Section 841 of Title 21, U.S. Code, deft. is placed on Special Parole for a period of SIX (6) YEARS in addition to said term of imprisonment.. Deft. is fined \$ 20,000. on count 2... The court orders commitment to the custody of the Atty. General and recommends, as in the case of co-deft. John Capra, that application for transfer to Lewisburg, if one is made, be given favorable consideration if possible... Frankel, J. Ent. 7-29-75 <i>7-29-75</i>
7-11-75	STEPHEN DELLACAVA - FILED AMENDED JUDGMENT..the deft is committed for imprisonment for a period of TWELVE YEARS on each of cts. 2, 3, 4, and 5 to run concurrently with each other..On cts. 4 and 5, pursuant to the provisions of Sec. 841 of Ti. 21, U.S. Code, deft is placed on SPECIAL PAROLE for a period of SIX YEARS in addition to said term of imprisonment. The Court recommends, as in the case of co-deft John Capra, that an application for transfer to Lewisburg, if one is made, be given favorable consideration if possible....Frankel, J. Ent. 7-29-75-----

DATE	PROCEEDINGS
7-11-75	ROBERT JERMAIN - FILED AMENDED JUDGMENT...The deft is committed for imprisonment for a period of TEN YEARS on each of Cts.1,2,3,4 and 5 to run concurrently with each other. On cts.1,4, and 5 pursuant to the provisions of Sec.841 of Ti.21, U.S. Code, deft is placed on Special Parole for a period of SIX YEARS in addition to said term of imprisonment...The Court recommends as in the case of codefendant John Capra, that an application for transfer to Lewisburgh, if one is made be given favorable consideration if possible.....Frankel, J.....Ent.7-29-75-----
7-11-75	GEORGE HARRIS - FILED AMENDED JUDGMENT...The deft is committed for imprisonment for a period of TEN YEARS...Sentence to run concurrently with sentence imposed under indictment 73Cr.392..Pursuant to the provisions of Sec.841 of Ti.21, U.S. Code, deft is placed on Special Parole for a period of FIVE YEARS in addition to said term of imprisonment....Frankel, J... Ent.7-29-75---
8-13-75	JACK BROWN - Entered and Filed Nolle Prosequi.....Frankel, J.
8-13-75	J. CAPRA - Filed commitment & entered return, 8-13-75 2 COPIES MAILED TO MSP ATLANTA, GA.
8-13-75	L. GUARINO - Filed commitment & entered return, 8-13-75 2 COPIES MAILED TO U.S.P. ATLANTA, GA.
8-13-75	G. HARRIS - Filed commitment & entered return, 8-13-75 2 COPIES MAILED TO U.S.P. ATLANTA, GA.
8-13-75	R. JERMAIN - Filed commitment & entered return, 8-13-75 2 COPIES MAILED TO U.S.P. ATLANTA, GA.
8-13-75	S. DELLACAVA - Filed commitment & entered return, 8-13-75 2 COPIES MAILED TO U.S.P. ATLANTA, GA.
9-18-75	Filed transcript of record of proceedings, dated 7-11-75.
11-20-75	JOHN CAPRA,) LEOLUCA GRARINO,) STEVEN DELLACAVA,) - Filed affdvt and notice of motion for an order granting new trial, to dismiss the indictment and for a hearing.
11-21-75	CAPRA + GUARINO + DELLACAVA= Filed Deft's Memorandum of Law.
01-20-76	JOHN CAPRA, LEOLUCA GUARINO, STEVEN DELLACAVA= Filed MEMO DECISION #43755 in ref. to Defts notice of motion for an order granting new trial, to dismiss the indictment, etc., filed 11-20-75. The motion in 73 CR. 460 is DENIED. the petition in 75 CIV 6183 is dismissed. IT IS SO ORDERED--FRANKEL, J. - (m/n's)
02-02-76	CAPRA + GUARINO + DELLACAVA= Filed Deft's Notice of Appeal to the U.S.C.A., 2nd circuit, from the judgment entered on 01-20-76. (m/n's)
02-18-76	CAPRA + JERMAIN= filed notice that the record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit this 02-18-76.
6-22-76	CAPRA- Filed true copy of USCA affirming the judgment of dist Court. Judgment ent. 6-23-76....Clerk <i>11/N</i>

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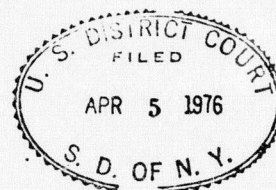
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

INDICTMENT

76 Cr.



JUAN ANTONIO ALVAREZ, a/k/a "Tony," :
 ANGEL RODRIGUEZ, a/k/a "Angelo," :
 JOSE LUIS SUREDA, a/k/a "Luis," :
 FRANK MOTER, a/k/a "Uncle," :
 SEBASTIAN INTERSIONE, a/k/a :
 "Benny," a/k/a "Mr. B," :
 JOHN CALRA, a/k/a "Johnny Hooks," :
 LEOLUCA GUARINO, :
 STEVEN DELLACAVA, a/k/a "Beansie," :
 WILLIAM HIGHTOWER, :
 SIDNEY FOSTER, a/k/a "Chinch," :
 JOSEPH SAMPSON, a/k/a "Bootsnose," :
 LOIS SAMPSON, :
 ANN REYNOLDS, a/k/a "Lois's :
 Sister," :
 MICHAEL PARKER, :
 YVONNE ALVAREZ SCHENNAULT, :
 AL WILLIAMS, a/k/a "Big Al from :
 Chicago," :
 DONALD O'DOOD, :
 DON WILSON, a/k/a "Don from South :
 Carolina," :
 JAMES LAWS, a/k/a "Tobe the Robe," :
 TOMMY DAVIS, a/k/a "Bipty," :
 BERNARD BRIGHTMAN, a/k/a "Nabe," :
 JOHN MORRIS, a/k/a "Papers," :
 LAWRENCE MITCHELL, a/k/a "L.J.," :
 SOLOM GLAZE, a/k/a "Solo," :
 RAPHAEL BONILLA, a/k/a "Spanish :
 Michael," a/k/a "Little Michael," :
 CHARLES COWPERS, a/k/a "Shi," :
 MARION DUNMORE, a/k/a "Shi's :
 Woman," a/k/a "Toni," :
 ALBERT LEE JONES, a/k/a "Al from :
 Norfolk," :
 HELEN KILLEM, a/k/a "Pam," :
 JOHN P. MORGAN, a/k/a "J.P.," :
 NELSON ALVAREZ, a/k/a "Tony's :
 Brother," :
 EDUARDO YAUJAR, a/k/a "Angelo's :
 Uncle," :
 LAZARO YAUJAR, a/k/a "Angelo's :
 Cousin," :

Defendants. :

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1968, and continuously thereafter up to and including the date of the filing

of this indictment, in the Southern District of New York,
and elsewhere,

JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a
"Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks,"
✓ LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie,"
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch,"
JOSEPH SAMPSON, a/k/a "Bootsie,"
LOIS SAMPSON,
ANN REYNOLDS, a/k/a "Lois's
Sister,"
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT,
AL WILLIAMS, a/k/a "Big Al from
Chicago,"
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe,"
TOMMY DAVIS, a/k/a "Bifty,"
BERNARD BRIGHTMAN, a/k/a "Nabe,"
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.,"
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi,"
MARION DUNMORE, a/k/a "Shi's
Woman," a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from
Norfolk,"
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's
Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
Cousin,"

the defendants, and others to the Grand Jury known and
unknown, unlawfully, wilfully and knowingly, combined,
conspired, confederated and agreed together and with each
other, to violate the narcotics laws of the United States,
specifically, Sections 173, 174, 812, 841(a)(1) and
841(b)(1)(A), 951, 952 and 960 of Title 21, United States
Code.

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, specifically heroin and cocaine, from and through countries unknown in South America and other places, in violation of Sections 173, 174, 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators, unlawfully, wilfully and knowingly would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of narcotic drugs, specifically heroin and cocaine, after these narcotic drugs had been imported and brought into the United States contrary to law, knowing that these narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly, would distribute and possess with intent to distribute heroin and cocaine, which are classified under law as Schedule I and II narcotic drug controlled substances, in violation of Sections 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND
CO-CONSPIRATORS TO ACCOMPLISH THE
OBJECTS OF THE CONSPIRACY

5. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

(a) The conspiracy took the form of a loose-knit organization with members of the conspiracy operating at three basic levels. At the first level, some of the defendants and co-conspirators served as importers and sources of supply of narcotic drugs. At the second level, other members of the conspiracy acted as middlemen, purchasing narcotic drugs, in wholesale quantities directly from the suppliers. In turn, these middlemen sold heroin and cocaine in multi-kilogram quantities to defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from sources of heroin and cocaine through middlemen, wholesalers and retailers and ultimately to narcotic addicts and users in New York City, Washington, D.C., Chicago, Illinois, Miami, Florida, and other cities in the United States.

(b) During the course of the said conspiracy the said defendants played the following roles in this conspiracy:

Importers and Sources of Supply

(1) Defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," were importers and suppliers of cocaine, doing business in New York City and Miami, Florida, who between 1968 and 1974 sold approximately 70 kilograms of cocaine each year.

(2) Defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," was a supplier of heroin, doing business in New York City.

(3) Defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," were suppliers of heroin, doing business in New York City, who between 1970 and 1973 sold kilogram quantities of heroin each month.

Wholesale Middlemen

(4) John Brown, a/k/a "Jack," named herein as a co-conspirator, but not as a defendant, was a bulk purchaser of heroin and cocaine from the importers and sources of supply.

(5) Defendant FRANK MOTEN, a/k/a "Uncle," was an advisor to John Brown, a/k/a "Jack," delivered narcotic drugs to Brown and received drugs from him, introduced certain defendants and co-conspirators to Brown for the purpose of purchasing drugs, vouched for them as reliable persons, financed the narcotic operations of several of the defendants and co-conspirators, engaged in financial dealings for Brown and other of the defendants and co-conspirators, and shared in the profits of the conspiracy.

(6) Defendant MICHAEL PARKER delivered narcotic drugs on several occasions to several of the defendants and co-conspirators.

Wholesale Traffickers

(7) Defendants WILLIAM HIGHTOWER, SIDNEY FOSTER, a/k/a "Chinch," JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased and resold kilogram quantities of heroin and cocaine while doing business in Washington, D.C. and New York City.

(8) Defendants YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD purchased and resold kilogram quantities of heroin and cocaine while doing business in Chicago, Illinois, Miami, Florida and New York City.

(9) Defendants DON WILSON, a/k/a "Don from South Carolina," JAMES LAWS, a/k/a "Tobe the Robe," TOMMY DAVIS, a/k/a "Bipity," BERNARD BRIGHTMAN, a/k/a "Nabe," JOHN MORRIS, a/k/a "Papers," LAWRENCE MITCHELL, a/k/a "L.J.," SOLON GLAZE, a/k/a "Solo," RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," CHARLES COWPERS, a/k/a "Shi", MARION DUNMORE, a/k/a Shi's Woman," a/k/a "Toni," ALBERT LEE JONES, a/k/a "Al from Norfolk", HELEN KELLEM, a/k/a "Pam", ANN REYNOLDS, a/k/a "Lois's Sister," and JOHN P. MORGAN, a/k/a "J.P.," purchased and resold kilogram quantities of cocaine and, with respect to certain of the defendants and co-conspirators, heroin while doing business in New York City and, in certain cases, in various cities in New Jersey.

Other Defendants

(10) Defendants NELSON ALVAREZ, a/k/a Tony's Brother," built secret compartments in various locations in Florida where he and his brother, defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," hid large amounts of cocaine and money related to narcotics transactions.

(11) Defendants NELSON ALVAREZ, a/k/a "Tony's Brother," EDUARDO YAUJAR, a/k/a "Angelo's Uncle," and LAZARO YAUJAR, a/k/a "Angelo's Cousin," picked up money as payment for narcotics and delivered it to defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo."

(12) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as suppliers of narcotic drugs and as purchasers and resellers of narcotic drugs, in various cities in the United States.

(c) The importers, wholesalers and re-tailers of heroin and cocaine who were the members of this conspiracy knew that their actions were inextricably linked to and aided by the actions of co-conspirators and, because of the scope of the venture, knew that others were involved in the performance of functions vital to the overall success of the business. Accordingly, each level of the operation depended for its success upon the existence of the others.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere.

1. In and about October, 1968, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

2. Thereafter, in and about November, 1968, the defendants SOLON GLAZE, a/k/a "Solo," LAWRENCE MITCHELL, a/k/a "L.J.," JOHN MORRIS, a/k/a "Papers" and JOSEPH SAMPSON a/k/a "Bootnose" purchased cocaine in New York, New York.

3. In and about 1968, the defendants AL WILLIAMS, a/k/a "Big Al from Chicago," DONALD O'DOOD, and another person purchased approximately three kilograms of heroin in New York, New York.

4. In and about March or April, 1969 the defendants ANGEL RODRIGUEZ, a/k/a "Angelo," and LUIS SUREDA, a/k/a "Luis," sold approximately 20 kilograms of cocaine in New York, New York.

5. In and about 1969 the defendant SIDNEY FOSTER a/k/a "Chinch," traveled to New York approximately four times each month to pick up eighth-kilogram quantities of heroin and cocaine for the defendant WILLIAM HIGHTOWER.

6. In and about 1969, the defendant FRANK MOTEN, a/k/a "Uncle," received large amounts of money in New York City.

7. In and about February, 1970, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," had a conversation in Madison Square Garden in New York City.

8. In and about October 1970, the defendants FRANK MOTEN, a/k/a "Uncle," JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," WILLIAM HIGHTOWER, TOMMY DAVIS, a/k/a "Bipty," JOSEPH SAMPSON, a/k/a "Bootnose," LOIS SAMPSON, and MICHAEL PARKER, met in Atlanta, Georgia.

9. In and about May, 1971, the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant SOLON GLAZE, a/k/a "Solo", to be used in the purchase of narcotics.

10. In and about 1971 the defendant FRANK MOTEN, a/k/a "Uncle," delivered money to the defendant JOHN MORRIS, a/k/a "Papers", to be used in the purchase of narcotics.

11. In and about the Fall of 1971 the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," sold approximately four kilograms of heroin in New York, New York.

12. Thereafter, in and about the Fall of 1971, the defendants WILLIAM HIGHTOWER, JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased heroin in New York, New York.

13. In and about the fall of 1971, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

14. In and about November, 1971, the defendant JAMES LAWS, a/k/a "Tobe the Robe," purchased approximately one kilogram of cocaine in New York, New York.

15. In and about December 1971, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," sold approximately three kilograms of heroin to the defendants YVONNE ALVAREZ SCHENNAULT, AL THOMAS, a/k/a "Big Al from Chicago," and DONALD O'DOOD, in New York City for \$27,000 per kilogram.

16. In and about March or April, 1972, the defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," delivered a quantity of heroin in New York, New York.

17. In and about June, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," had a telephone conversation with another person.

18. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," told another person that he would be responsible for all debts arising from the cocaine purchases of the defendant BERNARD BRIGHTMAN, a/k/a "Nabe."

19. In and about September, 1972, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately one-eighth kilogram of cocaine in New York, New York.

20. In and about September, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

21. In and about October, 1972, the defendant FRANK MOTEN, a/k/a "Uncle," sold approximately one kilogram of cocaine in New York, New York.

22. In and about November, 1972, the defendant DON WILSON, a/k/a "Don from South Carolina," received a approximately ten kilograms of cocaine in Orangeburg, New York.

23. In and about December, 1972, the defendant BOB SAMPSON received approximately one kilogram of cocaine in Orangeburg, New York.

24. In and about December, 1972, the defendant ANN REYNOLDS, a/k/a "Lois's Sister," received approximately one kilogram of cocaine in Orangeburg, New York.

25. In and about January, 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 18 kilograms of cocaine in New York, New York.

26. In and about January, 1973, the defendant BERNARD BRIGHTMAN, a/k/a "Nabe," received a quantity of cocaine in Orangeburg, New York.

27. In and about 1973, the defendant LOIS SAMPSON delivered approximately three-eighths kilogram of cocaine to the defendant WILLIAM HIGHTOWER in Washington, D.C.

28. In and about February, 1973, the defendant LAWRENCE J. MITCHELL, a/k/a "L.J.," received approximately one kilogram of cocaine in New York, New York.

29. In and about February, 1973, the defendant CHARLES COWPERS, a/k/a "Shi," received approximately one-eighth kilogram of cocaine in New York, New York.

30. On or about April 13, 1973, the defendant STEVEN DELLACAVA, a/k/a "Beansie," agreed to deliver one kilogram of heroin in New York, New York.

31. On or about April 13, 1973 the defendant STEVEN DELLACAVA, a/k/a "Beansie," had in his possession approximately \$14,000.

32. In and about April, 1973, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," received approximately one-half kilogram of cocaine at 135 West 96th Street, New York, New York.

33. In and about the summer of 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a, "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York City.

34. Thereafter, in and about the summer or fall of 1973, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 12 kilograms of cocaine in New York, New York.

35. In and about February, 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo" sold approximately 18 kilograms of cocaine in Miami, Florida.

36. In and about February or March, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 10 kilograms of cocaine in Miami, Florida.

37. In and about February or March, 1974, the defendants FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," purchased approximately 2 kilograms of cocaine in Miami, Florida.

38. In and about March or April, 1974, the defendant DON WILSON, a/k/a "Don from South Carolina," purchased approximately one kilogram of cocaine in Miami, Florida.

39. In and about March or April, 1974, the defendant MICHAEL PARKER purchased cocaine in Miami, Florida.

40. In and about April or May, 1974, the defendants, JUAN ANTONIO ALVAREZ, a/k/a "Tony" and ANGEL RODRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

41. In and about April or May, 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 14 kilograms of cocaine in Miami, Florida.

42. In and about May 1974, the defendant DON WILSON a/k/a "Don from South Carolina," met with the defendant MICHAEL PARKER and another person in Miami, Florida.

43. In and about May and June, 1974, the defendant MICHAEL PARKER sold cocaine to the defendants WILLIAM HIGHTOWER and SIDNEY FOSTER, a/k/a "Chinch," in Washington, D.C.

44. In and about July or August, 1974, the defendant YVONNE ALVAREZ SCHENNAULT traveled to Miami, Florida.

45. In and about the Fall of 1974, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo," sold approximately 20 kilograms of cocaine in Miami, Florida.

46. In and about the Fall of 1974, the defendant YVONNE ALVAREZ SCHENNAULT purchased approximately 15 kilograms of cocaine in Miami, Florida.

47. In and about March, 1975, the defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," had a conversation with another person.

(Title 21, United States Code, Sections 173, 174, 846, 963.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, JUAN ANTONIO ALVAREZ, a/k/a "Tony," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Four,

Five, Six and Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841 (b)(1)(A) as alleged in Counts Eight, Nine, Ten and Eleven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant FRANK MOTEN, a/k/a "Uncle," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant, FRANK MOTEN, a/k/a "Uncle," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT FOUR

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA a/k/a "Luis" the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

In and about October, 1972, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 18 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In and about the Summer of 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812
841(a)(1) and 841(b)(1)(A); Title 18, United
States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about October, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

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COUNT TEN

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In and about April, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B.," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTEEN

A 31

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO, STEVEN DELLACAVA, a/k/a "Beansie," YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago" and DONALD O'DOOD, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOURTEEN

The Grand Jury further charges:

In and about March or April, 1972, in the Southern District of New York, JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO, and STEVEN DELLACAVA, a/k/a "Beansie," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIFTEEN

The Grand Jury further charges:

In and about April, 1972, in the Southern District of New York, YVONNE ALVAREZ SCHENNAULT, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

13/28/76 Mike Brogan, filed grand jury indictment against John Capra, the late Alvin & Howard...

COUNT SIXTEEN

A 32

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, AL WILLIAMS a/k/a "Big Al From Chicago," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SEVENTEEN

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, AL WILLIAMS, a/k/a "Big Al From Chicago," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHTEEN

The Grand Jury further charges:

In and about November, 1972, in the Southern District of New York, DON WILSON, a/k/a "Don from South Carolina," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 10 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINETEEN

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, WILLIAM HIGHTOWER, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled

substance, to wit, approximately one-quarter kilogram of
heroin.

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(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY

The Grand Jury further charges:

In and about January, 1972, in the Southern
District of New York, WILLIAM HIGHTOWER, the defendant,
unlawfully, intentionally and knowingly did possess with
intent to distribute, Schedule I and II narcotic drug
controlled substances to wit, approximately one-eighth
kilogram of heroin and one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-ONE

The Grand Jury further charges:

In and about December, 1972, in the Southern
District of New York, WILLIAM HIGHTOWER, and SIDNEY FOSTER,
a/k/a "Chinch," the defendants, unlawfully, intentionally
and knowingly did possess with intent to distribute, a
Schedule II narcotic drug controlled substance, to wit,
approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A); Title 18, United
States Code, Section 2.)

COUNT TWENTY-TWO

The Grand Jury further charges:

In and about February, 1973, in the Southern
District of New York, WILLIAM HIGHTOWER and LOIS SAMPSON,
the defendants, unlawfully, intentionally and knowingly did
distribute and possess with intent to distribute a Schedule
II narcotic drug controlled substance, to wit, approximately
three-eighths kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A); Title 18, United
States Code, Section 2.)

COUNT TWENTY-THREE

A 34

The Grand Jury further charges:

In and about May, 1973, in the Southern District of New York, WILLIAM HIGHTOWER, SIDNEY FOSTER, a/k/a "Chinch" and MICHAEL PARKER, the defendants, unlawfully, intentionally, and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT TWENTY-FOUR

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, JOSEPH SAMPSON, a/k/a "Bootnose" and LOIS SAMPSON, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-FIVE

The Grand Jury further charges:

In and about June, 1972 in the Southern District of New York, JOSEPH SAMPSON, a/k/a "Bootnose," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SIX

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, LOIS SAMPSON, the defendant, unlawfully, intentionally and knowingly did possess with intent to

distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-SEVEN

The Grand Jury further charges:

In and about December, 1972 in the Southern District of New York, ANN REYNOLDS, a/k/a Lois' sister, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-EIGHT

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, TOMMY DAVIS a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-NINE

The Grand Jury further charges:

In and about December, 1971, in the Southern District of New York, TOMMY DAVIS, a/k/a "Bipty," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY

A 36

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, JAMES LAWS, a/k/a "Tobe the Robe," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-ONE

The Grand Jury further charges:

In and about May, 1971 in the Southern District of New York, SOLON GLAZE, a/k/a "Solo," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-TWO

The Grand Jury further charges:

In and about May, 1971, in the Southern District of New York, JOHN MORRIS, a/k/a "Papers," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-THREE

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, J.P. MORGAN, a/k/a "J.P." the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug

controlled substance, to wit, approximately 2 kilograms of cocaine.

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(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FOUR

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, LAWRENCE J. MITCHELL, a/k/a "L.J." the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FIVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, MARION DUNMORE, a/k/a "Toni," a/k/a "Shi's Woman," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-SIX

The Grand Jury further charges:

In and about February, 1973, in the Southern District of New York, CHARLES COWPERS, a/k/a "Shi," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-SEVEN

A 38

The Grand Jury further charges:

In and about November, 1971, in the Southern District of New York, ALBERT LEE JONES, a/k/a "Al from Norfolk," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-EIGHT

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, HELEN KELLEM, a/k/a "Pam," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, one-eighth kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-NINE

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately eight ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

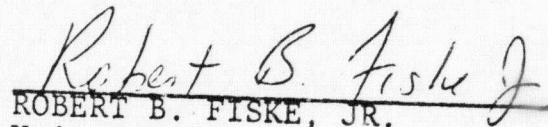
COUNT FORTY

The Grand Jury further charges:

In and about December, 1972, in the Southern District of New York, RAPHAEL BONILLA, a/k/a "Spanish Michael," a/k/a, "Little Michael," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately ten ounces of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)


Foreman


ROBERT B. FISKE, JR.
United States Attorney

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66-0324
Form No. USA-33s-274 (Ed. 9-25-58)
United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

JUAN ANTONIO ALVAREZ, a/k/a
"Tony," et al.,

Defendants.

INDICTMENT

76 Cr.

(21, U.S.C. 173, 174, 812, 841(a)(1),
841(b)(1)(A), 951, 952, and 960;
2 U.S.C. 2.)

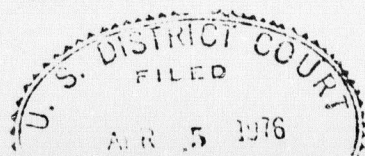
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

[Signature]
Foreman.

FPI-SS-2-19-71-20M-6950



JUDGE OWEN

APR 5

1976

APR 5

1976

APR 20

1976

4/21/76

APR 29

1976

Indictment filed. Fisher
Indictment Ordered Sealed.
Indictment ordered unsealed.
B/W ordered as to all defendants.
Indict. ordered resealed

Indictments ordered
unsealed.

Briant
Briant

Left Sebastian Intersimone (att
Hallam Muesoff present). Enter. p
7/2. Bail continued as per
May \$125,000. Remanded
Left. John Capra (w/o atty)
Ch. directs a 7/18 file be entered
left. Steven DeHacoe. Produce
(w/o atty) Ch directs a 7/18 be entered
left. Solon Klag. Produce
Writ (w/o atty) Ch directs a 7/18
be entered

Pretrial Conference
set motion schedule
trial date
remaining arraignments not
done 4/29

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
United States of America

v.

Antonio Alvarez, a/k/a "Tony,"
Rodriguez, a/k/a "Angelo,"
Luis Sureda, a/k/a "Luis,"
Koten, a/k/a "Uncle,"
Christian Intersimone,
"Beeny," a/k/a "Mr. B.,"
Capra, a/k/a "Johnny Hooks,"
Guarino,
Dellacava, a/k/a "Bernie,"
Hightower,
Foster, a/k/a "Chinch,"
Sampson, a/k/a "Bootnose,"
Sampson,
Reynolds, a/k/a Lois's Sister,
Parker,
Alvarez Shennault,
Williams, a/k/a "Big Al from
ago,"
O'Dood,
Wilson, a/k/a "Don from
Carolina,"
Laws, a/k/a "Tohe the Robe,"
Davis, a/k/a "Bipty,"
Brightman, a/k/a "Nabe,"
Morris, a/k/a "Papers,"
Mitchell, a/k/a "L. J.,"
Glaze, a/k/a "Solo,"
Bonilla, a/k/a "Spanish
el," a/k/a "Little Michael,"
Cowpers, a/k/a "Shi,"
Dunmore, a/k/a "Shi's Woman,"
"Toni,"
Lee Jones, a/k/a "Al from Norfolk,"
Kellem, a/k/a "Pam,"
P. Morgan, a/k/a "J. P.,"
Alvarez, a/k/a "Tony's Brother,"
Yaujar, a/k/a "Angelo's Uncle," and
Yaujar, a/k/a "Angelo's Cousin."

76 Cr. 324

Defendants.
-----x

May 7, 1976
10:00 a.m.

BEFORE:

HON. RICHARD OWEN,

District Judge

APPEARANCES:

Robert B. Fiske, Jr., Esq.,
United States Attorney
Daniel J. Beller, Esq.,
Assistant United States Attorney

Michael J. Osman, Esq.,
Carlos De Zayas, Esq. and
Richard B. Marx, Esq.,
Attorneys for Defendants Juan Antonio
Alvarez and Nelson Alvarez

David Stone, Esq.,
Attorney for Defendants Angel Rodriguez,
Eduardo Yaujar and Lazaro Yaujar

Nancy Rosner, Esq., and
Arnold E. Brown, Esq.,
Attorneys for Defendant Frank Moten

David Keegan, Esq.,
Attorney for Defendant Intersimone

John Capra, Pro Se

Leoluca Guarino, Pro Se

Steven Dellacava, Pro Se

Harold O. N. Frankel, Esq.,
Attorney for Defendant Hightower

Frederick Cohn, Esq.,
Attorney for Defendant Joseph Sampson

Myron McClary, Esq.,
Attorney for Defendant Lois Sampson

the government would accept that, but I would like to think about it. At the moment we have no objection.

THE COURT: At the present moment that would be the bail situation in the Southern District of New York.

MR. MARTIN: Thank you.

THE COURT: That takes care of the arraignments, doesn't it?

MR. BELLER: Yes, your Honor.

Your Honor, may I ask that all the defendants who were arraigned just now, and the defendants Hightower and Joseph Sampson and Lois Sampson, be ordered to report for fingerprinting and photographing by the marshal.

THE COURT: I would assume there is no problem as to that. When these proceedings are over that is so ordered and that may be accomplished when these proceedings are finished this morning. Those defendants just named are directed to report to the U. S. Marshal for fingerprinting and photographing.

Now, under the Court's rules as proposed, and under the Speedy Trial Act, I gather that we are all in agreement that this case must be tried as of July 19th or earlier. Am I correct about that?

MR. BELLER: That's the government's position, your

HONOR.

THE COURT: All right. Then the trial is set for the 19th of July.

MRS. ROSNER: Your Honor, I think I represent one of the only defendants who is being held in lieu of bail on this case rather than for any other sentence. That's Mr. Rosen.

I know that an application to reduce his bail has already been made in front of your Honor, and at least tentatively denied, and in view of --

THE COURT: No, it was very firmly denied.

MRS. ROSNER: I knew I shouldn't have given you that opening, Judge.

THE COURT: After a long hearing.

MRS. ROSNER: As I told your Honor's chambers, we are considering to reopen on additional information, but for present purposes he is being held without bail.

In light of the very high surety and the unlikelihood of his making the bail as fixed, I would move for the speediest trial that we can have, your Honor, within the ninety days.

I am free to try this case any time after a reasonable amount of time to conference with the government and make motions, so if it can be set down before July 19th,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

* against *

MOTION

JOHN CAPRA, LEOLUCA GUARINO and
STEVEN DELLACAVA, et al.,

PRO SE: 76 Cr 0324

Defendants.

JOHN CAPRA, LEOLUCA GUARINO and STEVEN DELLACAVA,

being duly sworn, depose and say:

1. On or about April 15th, 1976, we were indicted as defendants together with 30 other persons in the Southern District of New York and charged with three counts alleging violations of the UNITED STATES NARCOTIC LAWS. We request leave to refer to that indictment as if it were attached to these papers as an exhibit.
2. This affidavit is submitted in support of an application for multiple relief to include: (a) a continuation and adjournment of the trial date from July 19, 1976 to the Fall of 1976, (b) a severance, (c) an extension of time to allow counsel after appointment to make other motions in connection with this case.
3. We are charged in count 1 of the indictment with a conspiracy extending from January 1968 up to the filing of the indictment to violate the Narcotics Laws of The United States, Section 173, 174, 812, 841(A)(1), 951, 952 and ~~HEIN~~ 960 Of Title 21, United States Code, together with 30 other defendants. It is further alleged that during said conspiracy, the defendants, Capra, Guarino and Dellacava played the following role in the conspiracy: We were "suppliers of heroin, doing business in New York City, who, between 1970 and 1973, sold kilogram quantities of heroin each month.". We are further charged in counts 13 and 14 of the indictment with two substantive violations which allegedly occurred in or about December 1971 (count 13) and in and about March and April 1972 (count 14) in violation of Title 21, United States Code, Section 812, 841(A)(1), 841(B)(1)(a) and Title 18, United States Code, Section 2.

4. According to the indictment, we were connected to three other defendants named in the indictment and one named as co-conspirator. The indictment further alleges 47 Overt Acts. We are named in or connected to five of the Overt Acts. However, Overt Acts 33 through 47 are alleged to have occurred after April of 1973 and involves only co-defendants unrelated to us. The indictment further alleges 37 substantive counts against other defendants, where we are not involved at all.

5. We are presently without counsel, and are without the means to afford counsel. Your Honor has granted our request that we are able to choose counsel to be assigned who are familiar with the problem involved in the instant indictment. We have, in the past two weeks, spoken to the following attorneys: Barry I. Slotnick, Edward Panzer, Louis Aidala, George Santangelo and Daniel Meyers. Each of them have Federal trial experience. Mr. Slotnick represented John Capra at our previous trial in 1973 which trial involved the same conspiracy. Mr. Panzer represented co-defendant in 1973 in that self-same conspiracy. Mr. Aidala is presently representing Mr. Capra's brother, Michael Capra, who is charged with a conspiracy covering the same dates. Mr. Santangelo has represented Mr. Guarino on appeal from his conviction in 1973, involving the very same conspiracy alleged herein and is presently representing him on appeal on a denial for a motion for a new trial. Mr. Meyers is representing Mr. Albert Victory who is charged with a conspiracy involving approximately the same dates. Each of those attorneys for one reason or another is unable to become engaged in our trial which is scheduled for July 19, 1976 and is expected to continue for nine weeks thereafter.

6. Each of us had previously been indicted in 1973 and arrested in April of 1973 for conspiracy to violate the narcotic laws (73 Cr 460). Each of us was convicted in November 1973 of that conspiracy, which is the same conspiracy charged herein.

7. The evidence at that trial included testimony alleging a relationship between us and Jack Brown, a/k/a/ "Jack", a co-conspirator in the instant case and indicted as a defendant in 1973 but now named only as a co-conspirator in our present indictment. The evidence at our former trial also included testimony regarding the Overt Act alleged in the present indictment numbered 31. The evidence at our former trial also included approximately 16 months of wiretaps beginning in December 1971 and ending in March 1973, together with evidence derived therefrom which the government intends to introduce at our present trial without regards to taint.

8. The wiretaps conducted in December of 1971 led to the discovery of Jack Brown and the wiretaps in February, March and April 1972 similarly led to the discovery of the alleged relationship between us and Jack Brown. Those wiretaps, although declared legal by the District Court, were declared illegal by the Court of Appeals in UNITED STATES v. CAPRA, 501 F. 2d (2nd Cir. 1974). The government's contention not to use the illegal wiretaps does not make the wiretap case academic because of the problem of taint.

9. We expect that a witness who testified against us during the trial of 1973, John Ramos, and Jack Brown will testify against us with regard to the conspiracy count charged in this present indictment. It is necessary for us to review the logs, transcripts and tape recordings of those wiretaps in order to demonstrate our contention that the witnesses, Jack Brown and John Ramos, were discovered as a result of the illegal wiretaps and that the testimony of those witnesses was bargained for and procured on the basis of the illegal wiretaps. It is also necessary for us to review the illegal electronic surveillance to determine whether or not other evidence to be introduced against us on the conspiracy count is tainted by the already declared illegal wiretaps.

Since the two substantive counts charged in the present indictment are alleged to have occurred in December of 1971 when Jack Brown was discovered as a result of the illegal wiretaps and in March of 1972 when the illegal wiretaps

were continuing, it is our contention that these two substantive counts are tainted by the use of and through the illegal interception of our conversations.

10. The attorneys whom we have contacted have knowledge of these wiretaps and the evidence previously introduced against us in 1973. In fact, four (4) months during the Summer of 1973 were spent by us and our attorneys in that case, reviewing the wiretaps, logs and transcripts. The time required to familiarize new attorneys with the various wiretaps, logs, transcripts, motions and decisions involved with our case would appear to mandate the continuance.

11. The trial date of July 19, 1976 set by this court for the trial of 33 defendants will deny us a fair trial and the effective assistance of counsel. The indictment facially discloses three separate conspiracies. The Court of Appeals in UNITED STATES v. BERTOLOTTI has reversed convictions where the conspiracies were separate. The Second Circuit Court of Appeals has also commented in UNITED STATES v. SPETLING that the government should not join a multitude of defendants in one conspiracy trial because of the prejudicial effect it may have on different defendants whose participation in the conspiracy is limited in respect of time and acts.

12. The conspiracy ~~with~~ with which we were charged in 1973 is the self-same conspiracy with which we are charged in this present indictment. We were arrested in April of 1973 for that very same conspiracy. We were tried and convicted in November of 1973 for that very same conspiracy and have been incarcerated since November 1973 in the Atlanta Federal Penitentiary. We content, that as a matter of law, our participation in that conspiracy ended in April 1973 upon our arrest or at the very least in November 1973 upon our conviction and incarceration. Since the present indictment alleges many Overt Acts, involving co-defendants, to have occurred after April of 1973 and after

November of 1973, the prejudicial effect of these acts being introduced into evidence against these co-defendants will deny us a fair trial and will prevent a jury from separately considering our individual guilt with respect to the conspiracy and the substantive counts with which we were charged.

13. Furthermore, it is our contention, that the governments addition of the two substantive counts to the previously reversed conspiracy count is in effect an end run around the holdings in NORTH CAROLINA v. PEARCE, 395 U.S. 711, BLOCKLEIGH v. PERRY, 417 U.S. 21 and U.S. v. JAMISON, 505 F.2d 407, while and end run alone would not necessarily be fatal, in this instance, the government has gone out of bonds, U.S. v. JOHNSON, 19 Cr. L 2043 (4th Cir. 3/31/76). It is conceivable that if the present Judge does not sentence us according to the wish of the government, the government will conceivably re-indict us on other substantive counts in order to shop for a Judge sympathetic to the government. This Court should take note, that Judge Frankel in November of 1973 had the self-same conspiracy and four (4) substantives counts to sentence us with. The range of sentence possible is obvious. Judge Frankel in his discretion sentenced each of us to substantial terms of imprisonment and special parole. However, the government is not satisfied and now wishes a second bite at the apple. We respectfully object.

Leoluca Guarino
LEOLUCA GUARINO

John Capra
JOHN CAPRA
Stephen Della Cava
STEVEN DELLACAVA

Sworn to before me

this 13th day of May 1976

Edna
Notary Public

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)"

May 13th, 1976

The Hon.
Judge Irving R. Kaufman
Chief Judge
U.S. Court of Appeals
U.S. Court House
Foley Square
New York, N.Y. 10007

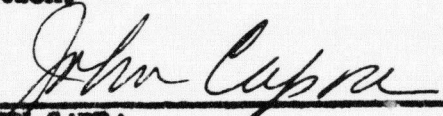
Sir:-

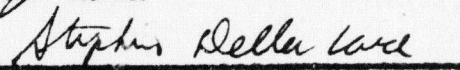
We have submitted the attached motion to the Hon. Judge Owens for his consideration.

You will note, that it involves serious questions related to our right to a fair trial and due process.

Your attention to the multiple conspiracy problem is especially requested in view of the Courts recent decisions concerning prior trials wherein defendants were joined in separate conspiracies.

Please consider this as an application for a mandamus in the event, that the Hon. Judge Owens chooses to deny our motion.


JOHN CAPRA


STEVEN DELLACAVA


LEOLUCA GUARINO

c/o
M.C.C.
150 Park Row
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

Defendant.

76-1450
76 Cr. 324
NOTICE OF MOTIONS

SIRS:

PLEASE TAKE NOTICE, that upon the indictment, all proceedings herein had, and upon the annexed motions, affidavits and memoranda of law, the defendant, LEOLUCA GUARINO, proceeding pro se, will move this Court, before Honorable Richard Owen, at the United States Courthouse for the Southern District of New York, at a time and place to be set by the Court, for an order granting to defendant relief as follows:

I

1. For an order pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure requiring the Government to serve and File a Bill of Particulars stating where and on what date did the defendant actually and personally

a. Enter the conspiracy

b. With whom did he form an illegal agreement to violate sections 173, 174 and sections 812, 841(a)(1), 841(b)(1)(A) and 951, 952 and 950 of Title 21 U.S.C.

(1) supply the dates, places and names of individuals that the Government will contend concerned Leoluca Guarino in furtherance of the conspiracy.

(11) supply the date, the Government alleges the conspiracy--

(1) commenced, (2) terminated.

2. As to Count I.

a. State the exact time and date the Acts were

committed as set forth in Overt Acts 7, 15, 16, 30, 31, etc..

b. Set forth the names of additional persons present at the time of said Overt Acts.

c. Set forth the name or names of the persons the Government claims actually received any money described in Overt Acts 15, 31, etc.

d. State the place where the defendant Leoluca Guarino allegedly met with the co-defendants and/or co-conspirators. If in a building, the address of the building; if in a car, the make and model of the car and if in a club or restaurant the name and location.

e. State why the alleged meetings are construed as Overt Acts in an alleged conspiracy to violate the narcotic laws.

II

3. For an order pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure compelling the prosecution:

a. To furnish the defendant with any and all statements, written or recorded, made by the defendant to any agency of the State or Federal Government which are now in the possession or control of the prosecution and which may be used by the Government at the trial of the defendant on either direct or in rebuttal; the existence of which is known or by the exercise of due diligence may become known.

b. Require the Government to permit the defendant to inspect, copy, photograph or make a recording of any relevant oral, written, or electronically recorded statements allegedly made by the defendant whose existence is known to the Government or by the exercise of due diligence may become known to the Government.

c. Require the Government to furnish to the defendant a copy of his criminal record as is now available to the Government.

III

4. For an order pursuant to Rules 16(a-2) and 16(b) of the Federal Rules of Criminal Procedure granting the defendant discovery and inspection as to:

a. The results of all scientific tests or experiments conducted by the prosecution or any State or Federal Agency on behalf of the Government.

b. As to any alleged statements, admissions or confessions of JACK BROWN and any other co-defendant or co-conspirator made to any State or Federal agency and which the Government may use at the trial of the defendant on either the direct or rebuttal case.

c. As to the above, to require the Government to permit the defendant to inspect, copy, photograph or make a recording of any relevant oral, written or electronically recorded statement allegedly made by JACK BROWN or any other co-defendant or co-conspirator to State or Federal agents whose existence is known to the Government or may be known to the Government through the exercise of due diligence, and which may be used by the Government at the trial of the defendant either on the direct or rebuttal case.

5. Require the Government to permit the defendant to inspect, copy, photograph or make a recording of any relevant oral, written or electronically recorded statement made by JACK BROWN or any other witness to State or Federal agents as to any matter which may be relevant to the case.

6. Require the Government to furnish to the defendant a written list of the names and addresses of all Government witnesses which the Government intends to call at the trial on the direct or rebuttal case.

7. Require the Government to furnish the defendant with a copy of any criminal record of persons whom the Government intends to call as witnesses at the hearing or trial.

8. Require the Government to disclose to the defendant any written or oral contracts and/or promises of monetary gain or leniency which the Government has made to JACK BROWN and any other co-conspirator or witness in return for testimony and/or statements against the defendant.

9. Require the Government to furnish to the defendant a list of all witnesses known to the Government and known by the Government to have knowledge concerning the subject matter of the instant indictment and whom the Government does not intend to call to testify in its behalf in the trial of this case.

10. Require the Government to furnish the defendant with any and all statements made by witnesses described in 9, to State or Federal agents, and which statements the Government does not intend to use at the trial of this case.

11. Require the Government to furnish to the defendant all other evidence relevant to the guilt or innocence of the defendant, gathered by State or Federal agents, in the possession of the Government or known to the Government which the Government does not intend to introduce on the trial of this case.

12. Require the Government to permit the defendant to inspect, copy, photograph or make recordings of books, papers, documents, photographs, recordings, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Government and which may be material to the preparation of his defense, or may be used by the Government at the trial on the direct or rebuttal case, or were obtained from, or belong to the defendant.

13. Require the Government to make available to the defendant all notes compiled and/or memorandas by any State and Federal agent or by any Government attorney(s) that has been signed or otherwise approved or adopted by any co-conspirator or witness interrogated in connection with the instant case.

14. Require the Government to permit the defendant to inspect, copy, photograph or make recordings of any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the case, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known.

15. State in detail, any evidence, information or matter which may, in any manner, bear upon the defendant's innocence of, or lesser degree of culpability, for the crime charged.

a. As to 15 above, require the Government to permit the defendant to interview witnesses under the control or custody of the Government to any such matter, or to inspect, copy, photograph or make recordings of any such matter.

16. Require the Government to disclose to the defendant the existence of all memorandum notes compiled by investigating State and Federal Agents, electronic surveillance, photographic surveillance, video tape and/or movie surveillance conducted against any co-defendant, co-conspirator, witness of the defendant, by the State and Federal agents under appropriate protective court order--or otherwise.

a. As to 16 above, require the Government to permit the defendant to inspect, copy, photograph or make recordings of any relevant memorandum notes, electronic surveillance, photographic surveillance, video tape and/or movie surveillance now in the possession or control of the prosecution.

17. Require the Government to produce for inspection any order and supporting papers contained therein providing for the electronic eavesdropping of any conversation of the defendant, co-defendants or co-conspirators or witnesses.

18. An order requiring the Government to disclose and to produce any and all conversations, statements, or words overheard by the Government or in conjunction with any investigations being conducted by State and Federal agents, regardless of the manner recorded where such conversation, statements, or words have been obtained as the result of electronic eavesdropping or eavesdropping in any other fashion whose clues and links were instrumental in helping to formulate the instant indictment.

a. As to 18 above, require the Government to furnish the defendant with a copy of any such eavesdropping warrant(s) and supporting papers, and require the Government to permit the defendant to inspect, copy, photograph or make recordings of any evidence, information or matter which was the result of, or the product of such eavesdropping warrant.

19. State whether any search warrant was issued in connection with, or used during any stage of the investigation resulting in the crime charged. If a warrant was so issued or used, state on whose application the warrant was issued, and when, where and by whom issued.

a. As to 19 above, require the Government to furnish the defendant with a copy of any such search warrant and supporting papers, and require the Government to permit the defendant to inspect, copy, photograph or make recordings of any evidence, information or matter which was the result of, or the product of such a search warrant.

20. State whether any evidence, information or matter was obtained or seized as the result of, or the product of any search of the defendant's, co-defendant's, co-conspirators or witnesses or any other party's person, home, place of

business, property or area of dominion. If any such search took place, state the names and addresses (or agencies) of persons making such searches.

a. As to 20 above, require the Government to permit the defendant to inspect, copy, photograph or make recordings of any evidence, information or matter seized.

21. State whether any person ever gave a physical description of the defendant to the Government or to any law enforcement (State or Federal) agency or to any other agency. If so, state the names and addresses of all such persons and the date, time and place of such statement or report.

a. As to 21 above, require the Government to permit the defendant to interview all such witnesses who are under the control or custody of the Government and to inspect, copy, photograph or make recordings of any reports in the control or custody of the Government as to such descriptions.

22. State whether the defendant, at any time prior to, or after the instant indictment, was the subject of an undisclosed or unknown identification as a perpetrator, participant or co-conspirator in the alleged crime (such as the planting of D.E.A/C.I.A agents in Atlanta Penitentiary, or of any other Government informers). If so, state the date, time and place of such, the names and addresses of all persons present, and the results of said procedure.

a. As to 22 above, require the Government to permit the defendant to interview all participants to said procedure who are under the control or custody of the Government, and to inspect, copy, or photograph any reports or photographs made of such procedure.

23. State whether any inmate or former inmate of the Atlanta Penitentiary, Metropolitan Correction Center or the former Federal Detention Headquarters, ever gave any statement, written, oral or recorded, to any State or Federal agency at the behest of any State or Federal agency.

a. As to 23 above, require the Government to permit the defendant to interview all participants to said procedure who are under the control or custody of the Government, (regardless of whether the Government intends to use them or the fruits thereof at the trial of the defendant either on the direct or rebuttal case) and to inspect, copy or photograph any reports or photographs made of such procedure.

24. State whether the Government has in its possession or control any statements, written, oral or recorded and/or electronic surveillance, photographic surveillance, video tape or movie surveillance compiled and gathered by former or present C.I.A. agents, or their informers, which supplied the clues and links to the instant indictment.

a. As to 24 above, require the Government to permit the defendant to interview all participants to any such procedure and to inspect, copy, record or photograph any reports or photographs utilized from such procedure.

**MOTION TO COMPEL DISCLOSURE OF ALL
EVIDENCE FAVORABLE TO DEFENDANT**

Defendant moves for an order compelling the Government to disclose and, in the case of a tangible item, to produce for inspection and copying by the defendant, all evidence in the possession and control of the Government, or others, when the evidence may be favorable to defendant and material to the issue of guilt or punishment, or could reasonably weaken or affect any evidence proposed to be introduced against defendant, or is relevant to the subject matter of the indictment, or in any manner may aid defendant in the ascertainment of the truth; the disclosure and production to be made without regard to whether the evidence to be disclosed and produced is deemed admissible at the trial herein; said disclosure and production to include, but not to

be limited to, the following evidence.

25. The statements of all persons who have been interviewed by an agent of the Government in connection with the subject matter of this case and whom the Government does not presently intend to call at trial.

26. The memoranda or summaries of any oral statement made to an agent of the Government by any person in connection with the subject matter of this case whether or not

a. The statement, if in writing, has been signed, adopted or approved by the witness, and

b. The statement relates to the proposed subject matter of the direct testimony of the witness at trial.

27. The stenographic recording or transcription of any oral statement made by any person to an agent of the Government in connection with the subject matter of the case, whether or not

a. The stenographic recording or transcription is a substantially verbatim recital of the statement, and

b. The statement was recorded contemporaneously with its making, and

c. The statement relates to the proposed subject matter of the direct testimony of the witness at trial.

28. The statements of persons or memoranda or recordings of any oral statement of any person, whether or not made to an agent of the Government.

29. The transcript or inspection thereof, of the testimony given before the Grand Jury during its investigation and consideration of the subject matter herein by any person whether or not the Government intends to call them to testify at trial.

30. Any memoranda, documents or statements acquired and/or made by the Government during the investigation of this case.

31. The names and addresses of all persons who may have some knowledge of the facts of the present case.

32. All reports and memoranda prepared on behalf of the Government or otherwise in connection with the investigation of this case.

33. Written or recorded statements, or a summary of any statement made by defendant or copies of such statements.

34. The results of reports of any scientific or economic tests or experiments or studies made in connection with the instant case, or copies of these reports.

ADDITIONAL DISCOVERY

35. Whether as to any of the acts or conversations intended to be relied upon by the Government at trial even though not alleged in the indictment (a) such acts or conversations were had at the instance of the Government; and (b) whether any person, including the defendant or any co-conspirator or witness known to the Government, regardless of whether named in the indictment, participating in or who arranged for any such act or conversation, was acting at the behest, instance of or on behalf of the Government, and, if so, identify such individual or individuals, state when, where and with whom they did so, and state whether such individual or individuals were directly or indirectly receiving or promised any money or benefit of any kind from the Government.

36. Identify (a) co-conspirators, if any, the Government will claim at trial defendant conspired with directly; and (b) any person whom the Government will claim acted for or at the direction of the defendant in connection with the crime charged.

37. Identify any co-conspirator or witness not known at the time of the filing of the instant indictment who has since become known to the Government.

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38. State where, how and in what form the defendant possessed the evidence to be used against him at the trial.

39. Specify, as to whom, where, with whom and in what manner the defendant entered the conspiracy and the duration of his participation.

40. Set forth the dates, times and exact location of the combination, conspiracy, confederation and agreement alleged in the indictment.

IV

41. For an order pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure to suppress the contents of any intercepted wire or oral communication to which defendant was a party, or to which he was an aggrieved person, or to which he has standing to object, and to suppress evidence derived therefrom on the grounds that:

a. Title III of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. Sections 2510-2520) is unconstitutional on its face and as applied and construed, in that it violates the First, Fourth and Fifth Amendments of the United States Constitution.

b. Chapter 1147 of the Laws of 1969, New York State; Title III, Sections 814-825, Criminal Procedure Law (now Article 100 of the New York Criminal Procedure Law) is unconstitutional on its face, and as applied and construed, in that it violates the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution.

c. Each such communication was unlawfully intercepted.

d. The orders of Authorization of approval under which each communication was intercepted are insufficient on their face.

e. Each such interception was not made in conformity with the Order of Authorization or approval applicable thereto.

f. The orders were not signed by the proper authorities, e.g., some of the orders bear the signature of Frank S. Hogan, the late District Attorney of New York City, for wiretaps in the Bronx, an area outside of the constitutionally conferred jurisdictional scope of said official.

42. To determine if the Government has produced to the defendant, for inspection, all portions of the Orders, warrants, applications, affidavits, intercepted communications, or evidence derived therefrom as the Court determines to be in the interests of justice.

43. To determine the standing of the defendant to all electronic interceptions disclosed by the Government in this case.

44. To determine the legality of the interceptions.

45. To determine the extent that illegal interceptions tainted the evidence to be presented by the Government.

46. To dismiss the indictment if the hearing discloses that such illegally obtained or tainted evidence was presented to the Grand Jury which returned the indictment.

V

47. For an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure severing the trial of the defendant, Leoluca Guarino, from the trial of the other defendants upon the grounds that said defendant is prejudiced by joinder of defendants and of the counts.

VI

48. For an order dismissing the indictment upon the grounds that the indictment as to conspiracy is too broad in scope and is merely a subterfuge by which defendants in

unrelated substantive counts can be tried together and tarred by the same brush.

VII

49. For an order dismissing the indictment upon the grounds that the array of the Grand Jury which found the indictment containing the charges against the defendant, Leoluca Guarino, was unconstitutionally selected in violation of Title 28, U.S.C., Sections 1861-62-63, in that qualified citizens of the United States were systematically excluded from acting as Grand Jurors, e.g., citizens of Spanish-American descent, Italian-American descent, of the Negro race, women and welfare recipients because of their economic status. Thus, rendering the Grand Jury a Blue ribbon panel in contravention of the defendant's constitutional rights.

VIII

50. For an order dismissing the indictment on the grounds of Double Jeopardy.

IX

51. For an order dismissing the indictments based on the failure to timely prosecute.

X

52. For an order dismissing the indictment based on violation of defendant's due process rights under the United States Constitution and Bill of Rights.

For such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
June , 1976.

Yours, etc.

Connelly P. Kaf
AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 3602)

6/7/76

Leoluca Guarino
LEOLUCA GUARINO

64

A

USA-33S-400

TO:

Mr Beller

76-1850

Kindly sign or initial this sheet on the line indicated,
acknowledging receipt of the attached letter, and return
to Room 453.

REGISTERED

MR. LEOLUCA GUARINO

P.O. BOX PMB # 78281

SPECIAL DELIVERY

ATLANTA, GA. 30315

12/6/76

RECEIVED

CERTIFIED

TIME 1:00 P.M. 0369657

REGISTRY #

FROM

RECEIVED BY:

Louis Greenspan

DELIVERED TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

76 Cr. 0324

NOTICE OF MOTION, AND NOTICE
TO CORRECT THE DOCKET ENTRIES
PURSUANT TO RULE 36, F.R.C.P.

SIR:

PLEASE TAKE NOTICE, that upon the indictment, all proceedings herein had, and upon the instant motion and affidavit, the defendant, LEOLUCA GUARINO, proceeding EXR 22, will move this Court, at the United States Courthouse for the Southern District of New York, at a time and place to be set by the Court for an Order granting defendant the following relief:

1. That this Court Order and Direct that the Docket Entries, as to the defendant LEOLUCA GUARINO, be corrected pursuant to Rule 36 of the Federal Rules Of Criminal Procedure so that they may correctly reflect that: (a) that the defendant is his own attorney of record and not Leonard Levenson, Esq., of 11 Park Place, New York City, as the docket entry reflects; and (b) for the docket entry sheets to be corrected to the extent that they reflect the many and various EXR 22 motions/letters submitted by the defendant.

That since the defendant is proceeding EXR 22 this motion should be entertained under the liberal guidelines enunciated in Haines V. Kerner (404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594).

For such other and further relief as to the Court may seem just and proper.

DATED: This 7 day of December, 1976.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78261

To: U.S. Attorney's Office
Southern District Of New York
U.S. Courthouse--Foley Square
New York, New York State 10007

David M. Edelstein, Chief Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

76 Cr. #324

AFFIDAVIT

STATE OF GEORGIA }
COUNTY OF FULTON } SS:

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that he is proceeding PER SE as he has been doing since the inception of the proceedings against him under the above numbered criminal indictment.

1. That the true title of the case is United States V. ALVEREZ, et al., and that the defendant, LEOLUCA GUARINO, is but one of thirty-three (33) individuals mentioned in said indictment.
2. That the defendant/affiant, LEOLUCA GUARINO, submits the instant affidavit in support of his appended motion for the correction of the docket entries pursuant to Rule 36, Federal Rules of Criminal Procedure.
3. That since there is a presumption of regularity attending all criminal proceedings, and records, it behooves this Court to order that the docket entry sheets reflect the truth so that in the event of trial and conviction the defendant/affiant may have a proper and adequate record, reflecting the truth, to appeal from in pursuing that constitutional right.
4. That in regards to the docket entry showing that Leonard Levenson, Esq., is the defendant/affiant's attorney this entry should be stricken from the docket entry as being clearly erroneous. The docket entry of 4-22-76 reflects that Judge McMahon assigned this case to this Court and directed that an attorney "report to (his) chambers immediately." On 5-21-76 the docket entry reflects that the defendant/affiant, LEOLUCA GUARINO, appeared before this Court and that Leonard Levenson, Esq., was present and that he was relieved as counsel. The docket entry does not reflect that this was done at the defendant/affiant's behest when he objected to the assignment of what he considers to be incompetent counsel due to prior

experience with Mr. Levenson. Thereafter, the docket entry of 6-4-76 reflects that the defendant/affiant refused assigned counsel and this Court entered an order allowing him to proceed pro se. The docket entry does not reflect that this was done because the defendant/affiant objected to the assignment of any attorney less than competent.

5. That the docket entry of 6-8-76 reflects that 2 copies of Criminal Justice Act 20 were filed approving the payment to Leonard Levenson, 11 Park Place, NYC 10007 as counsel for aft. On that same date there is a further docket entry appointing counsel for aft. - Leonard Levenson (sic), 11 Park Place, NYC 10007. An additional docket entry, on 6-16-76, reflects that this Court filed an order authorizing the payment of \$300.00 to Mr. Levenson, and other court-assigned attorneys, for investigative purposes.

6. That the defendant/affiant vehemently objects to these docket entries as not reflecting the truth of the matter, i.e., that he has strenuously objected to the appointment of Mr. Levenson, and to ~~any~~ attorney that is less than competent. To this end he has proceeded pro se in the filing of all pre-trial motions and has on numerous occasions put this Honorable Court on notice that he fully intends to proceed pro se at the trial of the indictment herein. (See Forrest V. California, ____ U.S. ____ 17 CrL 3156).

7. That Mr. Levenson has never submitted any pre-trial motions on behalf of the defendant/affiant nor has he conducted any investigatory work on the latter's behalf. Moreover, the defendant/affiant would not permit Mr. Levenson to do any thing on his behalf because of Mr. Levenson's polished incompetence ^{and} whom the defendant/affiant believes to be a mere extension of the prosecutor's office.

8. That numerous motions submitted by the defendant/affiant are not reflected on the face of the docket entry sheets and that the majority of them are still pending before this Court. These motions and/or letters are as follows:

(a) On May 5th or 6th, 1976, the defendant/affiant hand delivered a letter to this Court's Clerk (Mr. Myers) in which he detailed and complained of threats, intimidation, and harassment that he was subjected to, by DEA Agents, on the day that he appeared before Judge Ruckelshaus, i.e., on April 29, 1976. This letter/motion is not noted on the docket

entries nor has this Court ruled upon it.

(b) On May 13, 1976, the defendant/affiant filed a joint motion outlining his double jeopardy issues, enhanced punishment aspects of a new trial on the conspiracy count of 76 Cr. 0324, and a Portolatti issue, etc.; a copy of this motion was sent to Chief Judge Kaufman. This motion is not noted on the docket entries nor has this Court ruled upon it.

(c) On May 26, 1976, the defendant/affiant filed a letter/motion asking for an order granting him a single cell; unlimited visiting rights; free and unobstructed access to the institutional law library; and unlimited access to the phone. This was requested in order that the defendant/affiant might have the necessary means and facilities to adequately meet and question witnesses and thereby prepare an adequate and proper defense in order to meet the accusations contained in the indictment. This letter/motion is not noted on the docket entries nor has this Court ruled upon it.

(d) On June, 1976, the defendant/affiant filed for a Bill Of Particulars with an accompanying Memorandum Of Law. This motion is not noted on the docket entries; however, an opinion filed on 6-18-76 is reflected as having disposed of some matter that the Government needed to.

(e) On August 17, 1976, the defendant/affiant filed motions for an order to Show Cause, for a Writ of Habeas Corpus, affidavit and complaint thereto. This motion(s) is not noted on the docket entries; however, an entry on 8-19-76 reflects that this Court "decline(d) to sign this order to Show Cause." but it does not show how the other motions were disposed of.

(f) On September 9th or 10th, 1976, the defendant/affiant submitted a letter/motion objecting to his removal from the MEC as violative of the conditions of the Writ Of Habeas Corpus Ad Prosequendum, and further accusing the AUSA, Bellar, of sinister motives in prevailing upon this Court to order the defendant/affiant returned to the Atlanta Penitentiary. This letter/motion is not noted on the docket entries nor has this Court ruled upon it.

(g) On September 17th or 18th, 1976, the defendant/affiant submitted a letter/motion from the segregation unit of the Petersburg Reformatory reiterating the issues set forth in his letter/motion of September 9th or 10th, as noted above. This letter/motion is not noted on the docket entries nor has this Court ruled upon it.

(h) On October 1, 1976, the defendant/affiant submitted a letter/motion seeking to ascertain the status of the Writ of Habeas Corpus Ad Prosequendum, and an itemized listing of all letter/motions received by this Court as well as the disposition of each. This letter/motion is not noted on the docket entries nor has this Court ruled upon it.

(i) On October 6, 1976, the defendant/affiant submitted a motion and memorandum of law based on the Government's violation of 18 U.S.C. Section 201(h)(1). On the same date the defendant/affiant also submitted an additional motion requesting the psychiatric examination of the key Government witness, Jack Brown, with accompanying affidavit in support and memorandum of law thereto. The defendant/affiant does not know if these two latter motions appear on the docket entries; however, he does know that of this date, December 6, 1976, he has not received any ruling on it from this Court.

(j) On December 2, 1976, the defendant/affiant submitted a motion seeking the dismissal of the instant indictment, with prejudice, and citing United States v. Moore (20 Cr. 2146) as authority in an accompanying memorandum of law thereto. An affidavit in support was also submitted. The defendant/affiant does not know if said motion appears on the docket entries and he assumes that this Court has not yet ruled upon it.

9. That the defendant/affiant has proceeded pro se in the submission of all of the above enumerated motions.

WHEREFORE, under the facts and the law the defendant/affiant respectfully requests that this Honorable Court enter an Order granting the relief herein sought.

Yours etc.,

Leoburn Guarino

Leoburn Guarino #78261
Defendant-Affiant pro se

Sworn to before me this
7th day of December, 1976.

Charles C. Moore

Notary Public, Commission Expires 12/31/77
State of New York, County of New York (18 U.S.C.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

76 Cr. 0324

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF GEORGIA }
COUNTY OF FULTON }

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that on this 7th day of December, 1976, he served a copy of the instant Motion and Affidavit upon the United States Attorney for the Southern District of New York by placing same, in a sealed envelope, in the PMS Box for purposes of being forwards to the said United States Attorney via the United States Mail, all of which should constitute sufficient proof of service. Additionally, copies of the instant papers are also being forwarded to David M. Edelstein, Chief Judge, for the Southern District Court of New York.

Yours etc.,

Rebecca Greene

Leoluca Guarino #78281

Sworn to before me this
7th day of December, 1976.

Charles C. Moore

July 7 - to Adm. H. O. G. 1.5.6
Aug 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 71

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

Indictment No. 76 Cr. 0324

NOTICE FOR PSYCHIATRIC EXAMINATION
OF THE GOVERNMENT WITNESS, JACK
BROWN, TO DETERMINE HIS COMPETENCY
TO TESTIFY.

SIRS:

PLEASE TAKE NOTICE, that upon the indictment, all proceedings herein had, and upon the instant motion, memorandum of law and affidavit, the defendant, LEOLUCA GUARINO, proceeding pro se, will move this Court, at the United States Courthouse for the Southern District of New York, at a time and place to be set by the Court, for an order granting the relief herein sought because of the following:

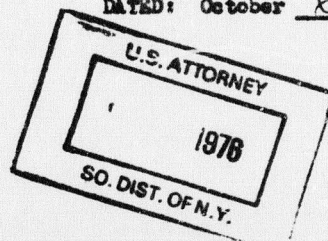
(a) The Government proposes to use undicted co-conspirator JACK BROWN as a witness against the defendant, LEOLUCA GUARINO. Said witness is incompetent to testify because upon information and belief the Government has subjected him to the mental manipulation of subliminal suggestion (brainwashing) and hypnosis.

The defendant therefore prays for an order declaring the use of JACK BROWN'S testimony to be a violation of due process because of its incompetency under the circumstances above stated and further enumerated in the attached affidavit and memorandum of law.

That since the defendant is proceeding pro se this motion should be entertained under the liberal guidelines promulgated in Haines V. Kerner (404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594).

For such other and further relief as to the Court may seem just and proper.

DATED: October 6, 1976.



Yours etc.,

Leoluca Guarino

Leoluca Guarino #78261
Defendant pro se

69

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Indictment No. 76 Cr. 0324

-against-

AFFIDAVIT

LEOLUCA GUARINO, et al.,

DEFENDANT.

STATE OF GEORGIA)
) ss:
COUNTY OF FULTON)

LEOLUCA GUARINO, after being duly by law sworn, deposes and says:
that the true title of the instant case is United States V. Alvarez, et al.,
and that he is one of the defendants therein; and that since the inception
of the proceedings against him he has been proceeding pro se.

1. That the instant affidavit is submitted in support of his motion appended hereto.
2. That on or about June 29, 1976, the defendant/ affiant, Leoluce Guarino, and co-defendants, John Capra and Steven Dellacava, were granted severances. And on August 10, 1976, trial to a jury commenced before Hon. Judge Owens as to the remaining (30) co-defendants.
3. That upon information and belief Government witness, JACK BROWN, is mentally incompetent to testify by virtue of the mental manipulation that Government agents have subjected him to for the past 2 years, approximately, which included but was not limited to hypnosis.
4. That upon the same information and belief Government witness, JACK BROWN, is presently hallucinating to the extent that he has testified that some of the co-defendants in the instant indictment possessed ray-guns that could shoot through walls.
5. That the defendant/affiant submits that the aforementioned facts clearly establish a prima facie showing the Government witness, JACK BROWN,

is mentally incompetent, and that to allow him to testify against the defendant/affiant, Leolusa Guarino, without the Court ordering a psychiatric examination for Jack Brown, would do violence to due process of law concepts.

WHEREFORE, the defendant/affiant prays for the relief requested in his motion appended hereto.

Yours etc.,

Leolusa Guarino

Leolusa Guarino #78261
Defendant/Affiant, prg 92

Sworn to before me this
6 day of October, 1976.

Charles C. Mott

Parole Officer: Authorized by the Act of
July 7, 1955 to Administer Oaths (18 U.S.C.)
9004g

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 74

UNITED STATES OF AMERICA,

Indictment No. 76 Cr. 0324

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

MEMORANDUM IN SUPPORT OF MOTION FOR THE
PSYCHIATRIC EXAMINATION OF THE GOVERNMENT
WITNESS, JACK BROWN, TO DETERMINE HIS
COMPETENCY TO TESTIFY

The Government intends to use the testimony of Jack Brown against the defendant Guarino. Jack Brown has been in continuous Government custody for approximately 2 years, and for 1½ years before the return of the instant indictment.

Upon information and belief Jack Brown has been subjected to the mental manipulation process of subliminal suggestion, commonly known as "brainwashing". Upon the same information and belief, Jack Brown has been subjected to the psychological process of fear induced by Government agents who would appear suddenly, in the early morning hours, to whisk him away from one place to another under heavy guard telling him that it was for his own safety because "the Mafia had put out a \$50,000 contract on his life", and that "they" had discovered where he (Jack Brown) was. In this manner, and under similar circumstances, the Government has repeatedly moved Jack Brown to various jails and safehouses, including motel/hotels, throughout the country, successfully isolating him from familiar surroundings and enveloping him in an aura of fear--until his original survival mechanism crumbled and he was able to be re-programmed by the Government, which upon information and belief included, but was not limited to, hypnosis.

The defendant Guarino respectfully prays that this motion should not be dismissed out of hand as frivolous. Far from being specious his contentions, besides being based on information and belief, find ample support in the pernicious mind control principles of subliminal suggestion.

Subliminal suggestion is a malignant disease of exposure. Given the proper environment, along with an artificially created atmosphere based on isolation, fear, domination, instruction and seduction, mostly everyone will succumb to the exposure. Of course before an individual can be exposed to subliminal suggestion he must be seized and spirited away, and/or surrender and be spirited away. In either case it is at this critical point that the seed of fear is sowed.

A basic example of brain programming concerns the newborn giraffe whose mother was shot by hunters. The baby giraffe--in accordance with its genetic program--fixated the first large moving object it saw, which happened to be the hunters' jeep. It followed, vocalized to, tried to suckle and eventually to mate with the unresponsive vehicle. The giraffe's survival instincts were hooked to that jeep.

It should be noted that a human being also is imprinted via its neural mechanism by outside influences and objects. These impressions are formulated in four distinct levels of development. They are as follows:

- (1) The infant biosurvival circuit, or consciousness, which is concerned with safety-danger signals here and now;
- (2) The older infant (toddler) circuit, or ego, which is concerned with motion and emotion;
- (3) The student, verbal-symbolic circuit, or mind, which is concerned with language and behavior;
- (4) The adult socio-sexual circuit, or personality, which is concerned with behavior.

The above are technically four brains that are persistently assaulted in the odious process called brainwashing--until the original impressions are wiped out. The bleached brain then stands ready to be re-imprinted. Since the original imprinting of these circuits was comparatively easy so is the mind manipulating process that cleanses it.

Such a bleaching process is what has happened to the witness Brown. Jack Brown has been in Government custody for approximately 2 years. He has been isolated from familiar surroundings so that his biosurvival imprint would not work, and thus reduced to his original state of infancy, i.e., first-brain vulnerability.* He was next exposed to terror tactics calculated to reduce

* Dr. John C. Liddy has pointed out that it only takes a few hours of true isolation before anxiety appears and only a little longer--a few days--before hallucinations begin, and the victim is ready to be imprinted with a new protective, maternal object.

him to a state of helplessness by continuously been moved around the country under the atmospheric spectrum of fear for his life. In this fashion the Government set the stage for the second step of imprint vulnerability. That helplessness can be escalated to panic by means of terror tactics is by no means novel. In Costa-Gavras's film "The Confession" the Communist Brainwashers take the subject from his cell, put a noose around his neck and lead him to a place where he expects to be hanged. (Here, Jack Brown is taken from his various places of isolated detention at all hours of the day and night and surreptitiously moved around the country, under heavy guard, under the guise that "the Mafia had put out a \$50,000 contract on his life." And that the movements were for his own protection).

It is obvious that at this point of mind manipulation the emotional brain hooks into the new power structure. The tormentors and oppressors become the protectors; the big brother image to whom Jack Brown is now dependent upon.

The constant moving about of Jack Brown served another purpose besides the one noted above. Paramount to reprogramming the third brain, the rational mind, is the necessity to wrench and detach the victim from familiar surroundings, i.e., separate him from those who share the same language, skills and abide by formulated rules of conduct that are deep rooted within the group. This is done by placing the victim in situations where ^{he} is constantly exposed to alien stimuli that compels him to imprint new signals and skills in order to survive. It is not unusual for a man to become a Communist when he lives with Communists, or an informer/turncoat when he is living amongst informer/turncoats; rather, it requires delicate neurological engineering to remain oneself under such conditions.

The personality, or fourth brain, is next assaulted. Reprogramming vulnerability is attained via seduction--sexual and otherwise. In the case at bar, and based upon information and belief, Jack Brown was seduced both by sexual favors* and freedom from prosecution along with monetary assistance.

The defendant Guarino contends that because of the subliminal suggestion technique employed against Jack Brown, which upon information and

* The granting of sexual favors to unindicted co-conspirators appears to be a common practice in the Southern District of New York. And there are indications that Government prosecutor's offices are used for these trysts. (See e.g., United States v. Sperling, 506 F.2d 1323, 1332 (2nd Cir. 1974)).

belief included hypnosis, that he is mentally incompetent to testify. His testimony will be tailor-made per the Government agents subliminal suggestions, with no foundation in truth. Consequently, it is respectfully requested that this Court order a psychiatric examination of the witness Jack Brown to determine his competency to testify.

CONCLUSION

Wherefore, under the facts and the law this Court should grant the relief herein requested and/or whatever other relief this Court may deem appropriate under the circumstances and responsive to due process of law.

DATED: October 6, 1976.

Respectfully submitted,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se

CERTIFICATE OF SERVICE
BY MAIL

STATE OF GEORGIA)
COUNTY OF FULTON) SS:

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that on this ____ day of October, 1976, he served a copy of the instant papers upon the U.S. Attorney for the Southern District of New York, all of which should constitute sufficient proof of service.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se
PO Box FMB
Atlanta, Georgia 30315

Sworn to before me this
6 day of October, 1976.

Charles C. McCall

Parole Officer: August 1, 1976
July 7, 1955 to administrative office (18 days)
1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 78

UNITED STATES OF AMERICA,

-against-

LEOLUCA GUARINO, et al.,

DEFENDANT.

Indictment 76 Cr. 0324

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the indictment, all proceedings herein had, and upon the instant motion, affidavit and memorandum of law, the defendant, LEOLUCA GUARINO, proceeding pro se, will move this Court, at the United States Courthouse for the Southern District of New York, at a time and place to be set by the Court, for an order granting to defendant relief as follows:

(a) For an order preventing the Government from using the testimony of unindicted co-conspirator JACK BROWN, and others, on the grounds that the Government employees have violated Sec. 201(h), 18 U.S.C., by giving him something of value in return for testimony against the defendant GUARINO.

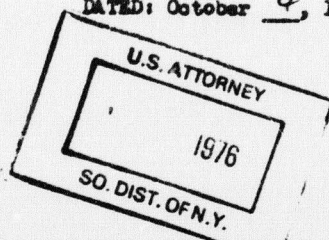
(b) For an order declaring that the use of BROWN'S testimony, under the circumstances enumerated in (a) above, will deprive the defendant of due process of law.

(c) For an order declaring the prosecution of GUARINO, for crimes which BROWN and others have admitted committing, to be an intentional discriminatory enforcement of a federal statute and a denial of due process and equal protection of the laws under the Fifth Amendment.

That since the defendant, LEOLUCA GUARINO, is proceeding pro se this motion should be entertained under the liberal guidelines promulgated in Haines V. Kerner (404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594).

For such other and further relief as to the Court may seem just and proper.

DATED: October 4, 1976.



Yours etc.,

Leoluca Guarino

Leoluca Guarino #78261

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 79

UNITED STATES OF AMERICA,

Indictment No. 76 Cr. 0324

-against-

LEOLUCA GUARINO, et al.,

AFFIDAVIT

DEFENDANT.

STATE OF GEORGIA)
COUNTY OF FULTON) SS:

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that the true title of the instant case is United States V. Alvarez, et al., and that he is one of the defendants therein; and that since the incipency of the proceedings against him he has been proceeding pro se.

1. That the instant affidavit is submitted in support of his motion appended hereto.
2. That on or about June 29, 1976, the defendant/affiant, LEOLUCA GUARINO, and co-defendants, JOHN CAPRA and STEVEN DELLACAVA, were granted severances. And on August 10, 1976, trial to a jury commenced before Hon. Judge Owens as to the remaining thirty (30) co-defendants.
3. That upon information and belief Government witness, JACK BROWN, an unindicted co-conspirator, has testified that he has monies, in vaults, in excess of TWO-HUNDRED AND FORTY THOUSAND DOLLARS (\$240,000) that the Government is aware of, and that said monies represent the profits of his extensive engagement in the sale and distribution of vast quantities of narcotic drugs and from his personal involvement in white slavery.
4. That upon the same information and belief Government witness, JACK BROWN, has testified that the Government has allowed him to retain his illicit profits and that he has not been indicted by the United States Revenue Service.

5. That upon information and belief Government witness, JACK BROWN, has testified that during the approximately two years that he has been in protective Government custody he was twice found with large quantities of cocaine in his possession; once in a bar, when his "protective" agents came to drive him home; and, the second time, when one of his girl friends sent and/or delivered some clothing to him while in a motel/hotel in the protective custody of Government agents. While searching the clothing the agents found a packet of cocaine in a tie.

6. That upon the same information and belief Government witness, JACK BROWN, has testified that neither he nor his girl friend have been indicted for the above mentioned incidents.

7. That upon information and belief Government witness, JACK BROWN, has testified that he has been receiving SIX-HUNDRED DOLLARS (\$600), from the Government, per month.

8. That the defendant/affiant submits that the aforementioned facts clearly establish a prima facie showing that the Government has violated Title 18 U.S.C. Section 201(h), by giving its witness, unindicted co-conspirator JACK BROWN, something of value in return for his testimony.

WHEREFORE, the defendant/affiant prays for the relief requested in his motion appended hereto.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant/Affiant, pro se

Sworn to before me this
6 day of October, 1976.

Charles C. Mott

Peace Officer, Authorized by the Act of
July 7, 1950 to administer oaths (18 U.S.C.
1-24f)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 81

UNITED STATES OF AMERICA

-against-

76 Cr. 0324

LEONARD GUARINO, et al.,

DEFENDANT.

INFORMATION OF LAW IS UP ON THE DEFENDANT
REASONABLE DOUBT TO PREVENT THE GOVERNMENT
FROM USING THE TESTIMONY OF UNTRUSTED CO-
CONSPIRATOR JACK BROWN, AND OTHERS, ON THE
GROUND THAT THE GOVERNMENT EMPLOYEES HAVE
VIOLATED 18 U.S.C. 201 (b), 18 U.S.C. BY OFFER-
ING OFFERS "OF VALUE" IN RETURN FOR TESTI-
MONY AGAINST GUARINO, I.e., A PICTURE OF TO
BE OFFERED ON THE INSTANT INDICTMENT; AND THAT
JACK BROWN HAS VIOLATED 18 U.S.C. 201 (c), 18 U.S.C.,
BY ACCEPTING AND RECEIVING SAID OFFER.

The Government intends to use an alleged accomplice, Jack Brown, (and perhaps others whom are presently unknown to the defendant Guarino) as a witness against the defendant. Although Brown has admitted committing the crimes for which the defendant Guarino stands indicted, the Government has dropped these charges against Brown, and he stands as an unindicted co-conspirator. For approximately two years the Government has had the witness Jack Brown in custody moving him around the country, alternatively threatening him with prosecution and paying him money. They have offered him, and in fact already have given him, the enticing gift of freedom from prosecution to the instant indictment, in return for his testimony.

Defendant Guarino contends that the use of Jack Brown's testimony, as well as other witnesses presently unknown, under these circumstances, would do violence to his rights under the Fifth Amendment to the Constitution, viz., due process of law and the equal protection of the laws, in that:

(a) The Government's promise of freedom and offers of monetary assistance to the witness Jack Brown, and others presently unknown to the defendant, in return for testimony under oath is prohibited by 18 U.S.C.,

ec. 201(h), under penalty of fine and/or imprisonment; and Jack Brown's acceptance of these terms, in return for his sworn testimony, is a crime under 18 U. S.C., Sec. 201(i).

(b) The inherently coercive situation created by the Government's promises and pressures, on Brown and others, renders Brown (and the others) incompetent witnesses, and the use of said testimony against defendant Guarino constitutes a denial of due process;

(c) Prosecution of defendant Guarino for crimes which Brown, and others, have admitted constitutes intentional discriminatory enforcement of a federal criminal statute, a denial of due process and a denial of equal protection of the laws.

1. The Government's Promise Of Pardon And Offers Of Monetary Assistance To The Witness Jack Brown, And Others Presently Imposed To The Defendant Guarino, In Return For "Testimony Under Oath" Is Prohibited By 18 U.S.C., Sec. 201(h), Under Penalty Of Fine And/Or Imprisonment; And Jack Brown's Acceptance Of These Terms In Return For "His Sworn Testimony" Is A Crime Under 18 U. S.C., Sec. 201(i).

Title 18 U. S.C., Sec. 201(h)(1), speaks in clear, precise and concise terms, its language is unequivocal. These two subsections read in their entirety as follows:

"(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

"(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom--

"shall be fined not more than \$10,000 or imprisoned for not more than two years, or both." (emphasis supplied)

In the case at bar we have the situation where a witness (Jack Brown) has been in the custody and control of Government agents for approximately 2 years. During this period of time he was not, nor has been, charged or prosecuted for any crimes. Still, he has remained in custody. The indictment

herein was returned by the Grand Jury on or about April of 1976. Jack Brown is alleged to have been "a bulk purchaser of heroin and cocaine from the importers and sources of supply." (Indictment solely as "a co-conspirator, but not as a defendant." (Ibid).

Germane to the above is Executive Order No. 11222, May 8, 1965, 30 F. R. 6469:

"Part II--Standards Of Conduct

Section 201. (c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of --

(2) giving preferential treatment to any organization or person;" (Emphasis supplied)

Additionally, it should be noted that corrupt intent is not required for a violation of Sec. 201(h), but only proof that something of value was given. (See United States v. Kerner, 354 F. 2d 780 (2nd Cir. 1965), cert. den. 86 S.Ct. 1223, 383 U.S. 958, 16 L.Ed.2d 301; and United States v. Irwin, 354 F.2d 192, 196 (2nd Cir. 1965), cert. den. 86 S.Ct. 1272, 383 U.S. 967, 16 L. Ed.2d 308).

11. The Inherently Coercive Situation Created By The Government's Promises And Pressures On Jack Brown Renders Him Incompetent As A Witness; And The Use Of Brown's Testimony Against The Defendant Guarino Constitutes A Denial Of Due Process.

The Government's treatment of the alleged co-conspirator, Brown, as set forth above, has created a situation "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom". (Ashcraft v. Tennessee, 322 U.S. 143, 154 (1944)). Moreover, the Supreme Court has stated that the Fourteenth Amendment cannot tolerate "fundamental unfairness in the use of evidence, whether true or false". (Blackburn v. Alabama, 361 U.S. 199, 206 (1960), (emphasis supplied).

The Fourth Circuit in a unanimous en banc decision held that due process bars use of a witness' voice identification of a defendant because of the fundamental unfairness in the techniques used in making the identification. (Palmer v. Perion, 399 F.2d 199 (4th Cir. 1966)). In Palmer, the argument that the manner in which the identification was made was an issue only of credibility or weight was forthrightly rejected. Said Judge Sobeloff of the procedure there involved:

"though a procedure fails to meet 'these canons of decency and fairness,' Malinsky v. New York, 324 U.S. 401, 416-17 (1945), establishes as a part of the fundamental law of the land. A state may not rely in a criminal prosecution upon evidence secured by pumping a man's stomach, Rechin v. California, 342 U.S. 165 (1952), by breaking into his home, Mann v. Ohio, 367 U.S. 643 (1961), or by employing subtle psychological methods on him, Levy v. Denno, 347 U.S. 556 (1954), nor may it rely on an identification secured by a process in which the search for truth is made secondary to the quest for a conviction." (Id., at p. 202)

Palmer was decided after the Second Circuit's en banc decision in Stovall v. Denno (355 F.2d 731 (1966)). The Fourth Circuit specifically pointed out that it did not reach any Escobedo problems, which were involved in Stovall, but concluded that the "entire atmosphere surrounding the identification was a violation of due process". (At p. 202). Significantly, the Fourth Circuit relied on the United States Supreme Court's confession and search and seizure cases in holding the due process clause applicable to the conduct involved in Palmer.

In the confession cases, the Court has abhorred pretrial pressure directed to the defendant himself and not to other witnesses utilized against a defendant. But the flexible contours of due process and its overriding concern for fundamental fairness should not prohibit the application of the doctrine announced in the confession cases to the testimony of Brown in the case at bar, as Palmer v. Peyton, supra, demonstrates.

Parenthetically, law is based on analogy, the comparison of new situations with those of the past, the misunderstood with the understood or supposedly understood. Consequently, the use of Jack Brown's testimony in the case at bar would be inconsistent with due process of law.

Defendant Guarino does not argue against the use of all testimony by a witness for the Government when the witness has been implicated in a crime with another. Rather, the defendant Guarino argues that there cannot be consistent with due process, the type of Government conduct to create the "sophisticated mode of 'persuasion,'" apparent here. (Balsburn v. Alabama, supra, at p. 206). A mode of persuasion that carries criminal sanctions. (See sec. 201(h), discussed at p. 2, supra).

The United States Supreme Court has more than once reversed convictions obtained under circumstances showing a substantial likelihood of prejudice to the defendant, even when such prejudice cannot be proved. In Turner v. Louisiana 379 U.S. 466 (1965)), the Court reversed a murder conviction where the State's primary witnesses were police officers who had the jury under their charge. The Louisiana Supreme Court had affirmed the conviction because there was no "showing of prejudice" from the practice. (379 U.S. at p. 470). The Supreme Court, by contrast, looked to "the potentialities of what went on," and recognized "the extreme prejudice inherent" in such a practice as the basis for reversing the conviction. (*Id.*, at p. 473). The Court followed similar reasoning in Lates v. Texas (381 U.S. 532 (1965)):

"...at times a procedure employed by the State involves such a probability that prejudice will result that is deemed inherently lacking in due process." (*Id.*, at pp. 542-43)

In his concurring opinion, Chief Justice Warren recalled Turner, supra, and added:

"...the Court has on numerous other occasions reversed convictions, where the formalities of trial were observed, because of practices that negate the fundamental conception of trial.

"This line of cases...stands for the proposition that the criminal trial under our Constitution has a clearly defined purpose, to provide a fair and reliable determination of guilt, and no procedure or occurrence which seriously threatens to divert it from that purpose can be tolerated." (381 U.S., at pp. 563-64)

Lates carried a footnote, No. 22, citing a progression of Supreme Court decisions in which prosecutors have been held to increasingly higher standards of fairness in the presentation of evidence.

In the instant case, it would be "blinking reality not to recognize the extreme prejudice inherent," under the totality of circumstances comprising the technique utilized here to assure co-conspirator Jack Brown's testimony. (Turner v. Louisiana, supra, 379 U.S. at p. 473).

iii. Prosecution Of Defendant Guarino For Crimes Which Brown Has Admitted Constitutes Intentional Discriminatory Enforcement Of A Federal Criminal Statute And Constitutes A Denial Of Due Process Of Law.

Defendant Guarino is about to stand trial for crimes which Jack Brown has admitted committing. Yet, as noted, not only is Brown not prosecuted at all, but he has actually been receiving money from the Government

in direct violation of 18 U. S. C., Sec. 201(h)(1). Thus, Jack Brown and the Government agent/employees are violating a criminal statute and, indeed, may be violating two criminal statutes, i.e., 18 U.S.C., Sec. 371, the general conspiracy statute in order to adduce testimony against the defendant Guarino.

Such intentional discriminatory enforcement of a federal criminal statute violates the due process clause of the Fifth Amendment, inasmuch as the defendant Guarino is exposed to the full impact of the unequal application of the laws.

The Government recently prosecuted a private investigator for the alleged wiretap interception and divulgence of private telephone conversations, in violation of Sec. 605 of the Communications Act of 1934. After the jury returned a verdict of guilty, the defendant filed a motion for judgment of acquittal on the ground that the Government had engaged in a systematic and intentional policy of discrimination in its enforcement of the statute, in violation of the due process clause of the Fifth Amendment. The trial court granted the motion and acquitted the defendant holding that the Government should not be allowed to prosecute private individuals as long as its own agents are free to practice unlawful wiretapping with impunity. (See United States v. Robinson, 311 F. Supp. 1063 (W.D. Mo. 1969)). The Court in Robinson relied on the opinion in Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886), where the Supreme Court held:

"Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an * * * unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

The prosecution of defendant Guarino, under the circumstances of this case, constitutes intentional discriminatory enforcement of a federal criminal statute in violation of the Fifth Amendment. A fortiori when the prosecutor, agents, and or other Government employees are allowed to cavalierly ignore the proscriptions of Sec. 201(h), 18 U.S.C.

CONCLUSION

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WHEREFORE, under the facts and the law this Court should grant the relief herein sought, i.e., dismiss the indictment against the defendant Guarino, with prejudice, and/or initiate proceedings against whoever is responsible for making the premises of something "of value" to the Government witness, Jack Brown, for testimony against the defendant; and/or that this Court grant whatever other relief may be appropriate in the premises.

DATED: October 6, 1976.

Respectfully submitted,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se

CERTIFICATE OF SERVICE
BY MAIL

STATE OF GEORGIA)
COUNTY OF FULTON) SS:

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that on this ____ day of October, 1976, he served a copy of the instant papers upon the U.S. Attorney for the Southern District of New York, all of which should constitute sufficient proof of service.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant, pro se
PO Box 778
Atlanta, Georgia 30315

Sworn to before me this
6 day of October, 1976.

Charles C. Miller

Notary Public for the State of Georgia
(No. 111111)

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DAVID C. PATTERSON, being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the ^{two} ~~13th~~ ^{ies} day of ^{appendix} ~~July~~, 1977,
he served a copy of the within ~~order~~ by placing the same
in a properly postpaid franked envelope addressed:

LEOLUCA GUARINO
PO Box PMB #78281
Atlanta, Georgia 30315

And deponent further says that he sealed the said envelope
and placed the same in the mail box for mailing at One St.
Andrew's Plaza, Borough of Manhattan, City of New York.

David C. Patterson

Sworn to before me this

13th day of July, 1977

Maria A. Israelian
Notary Public, State of New York
No. 31-4521851
Qualified in New York County
Term Expires March 30, 1978